



C.R.P.(NPD)(MD).No.1112 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.1112 of 2018

1. Prema

2. Siluvai

... Petitioners/Petitioners/
Decree Holders/Claimants

-VS-

M.V.Rajarathinam & Sons
Jeera Merchants,
Door No.69 of Peraira Street,
Tuticorin,
Tuticorin District.

... Respondents/Respondents
Judgment Debtor/2nd Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 06.12.2017 in E.P.No.125 of 2013 in M.C.O.P.No.209 of 2009 on the file of the Principal District Court, Tuticorin.

For Petitioners : Mr.B.Rajesh Saravanan

For Respondent : No appearance



C.R.P.(NPD)(MD).No.1112 of 2018

WEB COPY

ORDER

The present Civil Revision Petition has been filed by the claimants in M.C.O.P.No.209 of 2009, on the file of the Principal District Court, Tuticorin, challenging the dismissal of the execution proceedings.

2. The revision petitioners herein as claimants filed M.C.O.P.No.209 of 2009, before the Motor Accident Claims Tribunal/Principal District Court, Tuticorin, claiming compensation as against the respondent in the revision petition.

3. The respondent herein had filed a counter disputing his liability and quantum. On 28.11.2012, an award was passed by the Tribunal as against the respondent herein for a sum of Rs.3,36,500/- with interest at the rate of 7.5% p.a.

4. The claimants have filed E.P.No.125 of 2013 as against the second respondent in the claim petition. For the first time, the second respondent had taken a stand in the counter that the second respondent firm was dissolved in



C.R.P.(NPD)(MD).No.1112 of 2018

the year 2006 itself. Therefore, the present Execution Petition filed as against the dissolved firm is not maintainable. The said ground was accepted by the Tribunal and the Execution Petition filed by the claimants has been dismissed. Challenging the same, the present Civil Revision Petition has been filed.

5. According to the learned counsel appearing for the revision petitioners, one Kanagavel had filed the counter in M.C.O.P.No.209 of 2009 admitting himself to be a partner of the firm. He also examined himself as R.W.1. The same person has now filed a counter contending that the firm has been dissolved even before filing the claim petition. Therefore, it is clear that the claimants would be entitled to proceed against any of the parties who had admitted the partnership of the alleged firm which has been dissolved as contemplated under Order 21 Rule 50 of C.P.C. Hence, he prayed for allowing this revision petition.

6. Though notice was sent to the respondent and the same has been returned with an endorsement as “refused” and the name was also printed in the cause list, none appeared on behalf of them.



C.R.P.(NPD)(MD).No.1112 of 2018

WEB COPY

7. The second respondent before the Motor Accident Claims Tribunal had filed their counter in the main claim petition in the year 2009 without disclosing the fact that the firm has been dissolved in the year 2006 itself. Even while being examined as R.W.1, the partner of the firm has not disclosed about the dissolution of the firm. For the first time, such a stand has been taken in the counter filed in the execution proceedings. It could also be seen that the counter in the Execution Petition has also been filed by the said Kanagavel, who was examined as R.W.1 in the main claim petition. Therefore, it is clear that the claim petitioners would be entitled to invoke Order 21 Rule 50 of C.P.C. The Tribunal ought not to have rejected the execution proceedings in entirety without permitting the claimants to proceed as against the individual partners, if they are so aggrieved.

8. In view of the above said facts, the order impugned in the Revision Petition is set aside and the matter is remitted back to the file of the Motor Accident Claims Tribunal/Principal District Court, Tuticorin, so as to enable the claimants to proceed against Mr. Kanagavel, in his individual capacity who admitted himself as the partner of the second respondent firm in the Motor Accident Claim Petition.



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C.R.P.(NPD)(MD).No.1112 of 2018

9. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs.

10.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Principal District Court,
Tuticorin.



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C.R.P.(NPD)(MD).No.1112 of 2018

R.VIJAYAKUMAR,J.

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C.R.P.(NPD)(MD)No.1112 of 2018



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C.R.P.(NPD)(MD).No.1112 of 2018

10.04.2024