



C.R.P.(MD)No.3059 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.3059 of 2023
and C.M.P.(MD).No.15774 of 2023

Varkesh

... Petitioner/1st Respondent/
1st Judgment Debtor

Vs.

1.Vijilkumar

... Respondent/Petitioner/
Decree Holder

2.Raj

3.Antokingcily

... Respondent/Respondents 2 & 3
/Judgment Debtors 2 & 3

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order dated 15.09.2023, passed by the learned Sub Judge, Eraniel, passed in E.P.No.6 of 2021 in M.C.O.P.No. 127 of 2008.

For Petitioner : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.N.S.Ramakrishnadass for R1
No Appearance for r2 & R3



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ORDER

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This revision petition has been filed to set aside the order dated 15.09.2023, passed by the learned Sub Judge, Eraniel, passed in E.P.No.6 of 2021 in M.C.O.P.No.127 of 2008.

2.The facts in brief:

M.C.O.P.No.127 of 2008 was filed by the claimants namely Vijayakumar and award was passed directing the respondents in main petition to pay a sum of Rs.3,15,236/- with subsequent interest and cost by the award dated 06.06.2012. There was no appeal by any one. That award was put into execution in E.P.No.6 of 2021 by the decree holder. This revision petitioner resisted the execution of the award stating that the award was passed against three persons. But, the execution petition was filed only against him, which is not maintainable. That was rejected by the Execution Court stating that it is joint and several liability. The Execution Court cannot go behind the back namely the award to find out whether the revision petitioner was not the owner on the date of occurrence. Against which, this revision is preferred by the first respondent. The very same ground is raised in this petition also.



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3.As rightly held by the Execution Court, the liability was joint and several. There is no question of execution of the order against all the judgment debtors. That choice is available to the decree holder. Moreover, the revision petitioner can very well satisfy the award and later get the ratable contribution from other respondents as per Sections 42 and 43 of Indian Contract Act, which are extracted hereunder.

“42. Devolution of joint liabilities.—When two or more persons have made a joint promise, then,unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43.Any one of joint promisors may be compelled to perform.—When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any 1 [one or more] of such joint promisors to perform the whole of the promise.”



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4.It is also seen that the revision petitioner has deposited the award amount and challan is also produced. So nothing survives in this petition.

5.In view of the above, liberty is granted to the revision petitioner herein to challenge the final order passed by the tribunal in M.C.O.P.No. 127 of 2008. The time consumed in this proceedings shall be deducted while filing the appeal. The claimant is entitled to withdraw the amount deposited by the revision petitioner without prejudice to the right of the revision petitioner as noted above.

6.With the above said liberty and directions, this petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Subordinate Judge, Eraniel.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN,J.

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