



CRP NPD.No.1455 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 08.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.1455 of 2023 & CMP.No.9720 of 2023

A.S.Jahangir

. . . Petitioner

Versus

1. M/s.Operating Lease and High Purchase
Company Limited, 'Vairams'
Rep. by its Director N.D.Achaiah
No.112, Sir Thyagaraya Road,
T.Nagar, Madras – 17.

2. M/s.Balaji Garment Processing,
Rep. by its Proprietor M.S.Balaji,
No.025, Industrial Estate,
Guindy, Madras – 32.

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair Order passed in E.A.No.2 of 2023 in E.P.No.688 of 2020 in O.S.No.83 of 2017 dated 21.02.2023 on the file of the XXVIII Assistant City Civil Court and allow the Civil Revision Petition.

For petitioner : Dr.A.Thiyagarajan, Senior Counsel



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For Mr.C.B.Murali Krishnan

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For respondents : Mr.V.P.Raman – R1

ORDER

Challenge has been made against the Order passed by the Execution Court dismissing the application filed by the revision petitioner/ second judgment debtor under section 47 of the Code of Civil Procedure, in the present Civil Revision Petition.

2. The Execution Petition has been levied by the decree holder to enforce the decree and judgment passed by this Court in C.S.No.874 of 2001 which was renumbered as O.S.No.87 of 2001 on the file of the City Civil Court, Chennai. The said suit was originally decreed exparte. Thereafter, an application has been taken out by the revision petition under Order IX Rule 13 of Code of Civil Procedure and the same has been dismissed after contest on 03.11.2018. It has also been confirmed by this Court in CRP.No.680 of 2020. In the Execution Petition, an application has been taken out by the second judgement debtor stating that the amount has already been discharged and the plea of discharge has been taken under section 47 Civil Procedure Code. However, the trial Court

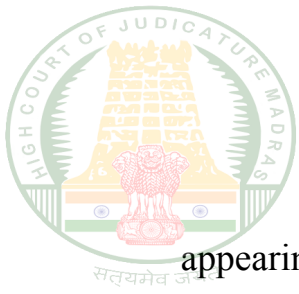


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taking note of the fact that the plea of discharge has been taken by the guarantor prior to the passing of the decree and hence, the liability of the guarantor cannot be re-examined in an application filed under section 47 of Code of Civil Procedure, dismissed the application. As against which, the present Civil Revision Petition has been filed.

3. The main contention of the learned counsel appearing for the petitioner is that though the principal borrower has already filed a suit against the respondent herein in O.S.No.4447 of 2000, in the said suit, a written statement had also been filed by the respondent, wherein it is stated that for the machineries also, the amount has been extended. Therefore, according to the revision petitioner, entire amount has been discharged. It is his further contention that though the petitioner had sought no overdue certificate as on 31.12.1997, the respondent has not given the same. Hence, it is his contention that the trial Court without considering all these aspects, dismissed the application.

4. I have perused entire materials. Heard Dr.A.Thiyagarajan, learned Senior Counsel appearing for the petitioner and Mr.V.P.Raman, learned counsel



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appearing for the first respondent.

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5. The fact remains that if a person takes a plea of discharge, entire burden lies on him to prove the discharge. Merely based on the oral submissions, one cannot plead discharge. The trial Court has clearly pointed out that as the principal borrower had sought no due certificate up to particular date, since they had paid the amount till such time and taking note of such payment, no over due letter said to have been issued at the request of the principal borrower, till a particular period, it cannot be taken advantage by the revision petitioner to contend that there is no due at all in the said accounts. In such view of the matter, I do not find any merits in this revision.

6. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

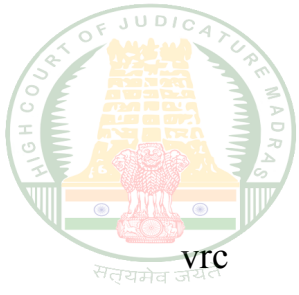
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Internet: Yes

Speaking/non speaking order

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To,

The XXVIII Assistant Judge,
City Civil Court, Chennai.



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N. SATHISH KUMAR, J.

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