



C.R.P.Nos.2865 & 5085 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2024
PRONOUNCED ON : 9.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.Nos.2865 & 5085 of 2023
and
C.M.P. Nos.17759 & 29585 of 2023

M.Kumar

... Petitioner
in both CRPs

Vs.

Margadarsi Chits Private Limited
Rep.by its Foreman, Branch : Anna Salai
A-Wing, Flat No.1 & 2, 2nd Floor,
Parsn Manere, No.602, Anna Salai,
Chennai – 600 006

... Respondent
in both CRPs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 03.06.2023, passed by the learned X Assistant City Civil Judge at Chennai in E.A.No.863 of 2022 in E.P.No.2720/2021 by allowing this Revision Petition.

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 15.11.2023, passed by the learned X Assistant City Civil Judge at Chennai in E.A.SR.No.78975 of 2023 in E.P.No.2720/2021 by allowing this Revision Petition.



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C.R.P.Nos.2865 & 5085 of 2023

For Petitioner : Mr.S.Devaraj
For Mr.S.Rajendran
(in both cases)

For Respondent : Mr.D.Shivakumaran
(in both cases)

COMMON ORDER

Since the issue involved in both the Civil Revision Petitions is one and the same, they are disposed of by this common order.

2. The petitioner / Judgment Debtor 2, has filed a Petition in E.A.No.3 of 2022 under Order 21, Rule 26(1) of CPC., to stay all further proceedings in E.P.No.2720 of 2021, pending adjudication on the file of the City Civil Court at Chennai, until disposal of the Suit in O.S.No.7906/2021 pending on the file of the VI Assistant City Civil Court at Chennai.

3. The petitioner / Judgment Debtor 2, has filed a Petition under Section 47 of CPC., to dismiss the E.P.No.2720/2021 as the award sought to be executed is nullity and in-executable, as it was obtained by playing fraud and without jurisdiction.



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4. Mr.S.Devaraj, the learned counsel appearing for the petitioner / Judgment Debtor 2 would submit that the respondent Chit Fund Company filed a Petition in E.P.No.2720 of 2021, based on the *ex-parte* Award, dated 17.06.2013, passed by the Arbitrator of Chits in ARC.No.682/2012. The respondent Chit Fund Company has sought for attachment and sale of petitioner's family's dwelling house property. The petitioner instituted a Suit in O.S.No.7906/2021, for declaration seeking nullity of the Award, which is the subject matter in the above execution petition. The petitioner also sought for a damage for a sum of Rs.3,00,000/-. The said Suit is pending for adjudication on the file of the VI Assistant Judge, City Civil Court, Chennai. The Award was obtained by way of fraud played by the Branch Manager / Foreman of the respondent Chit Fund Company. In fact, the petitioner no way connected to the subject chit transaction and never stood as a guarantor thereof nor signed any document relating to the said chit transaction. In these circumstances, if the above EP is proceeded with further and his family dwelling house property is attached and sold out, the right and interest of the family members will greatly be prejudiced and the petitioner will be put in peril. The balance of convenience is also in his favour.



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5. The learned counsel for the petitioner would further submit that the petitioner filed E.A.S.R.No.78975 of 2023 under Section 47 of CPC., on the ground that Award is nullity and inexecutable, as it was obtained by playing fraud and without jurisdiction. The petitioner has challenged the Award along with condone delay application and the same was rejected by order dated 18.12.2015. Aggrieved over the same, the petitioner preferred a Writ Petition before this Court in W.P. No.8448/2016 and this Court directed the petitioner to deposit the entire Award amount to the credit of E.P.No.4188/2014 and as the petitioner unable to deposit the amount, the said Writ Petition was dismissed. Thereafter, the petitioner filed E.A.No.1/2019 in E.P.No.4188/2014 and in the said E.A., when the evidence was over, the very EP was withdrawn by the Decree Holder on 12.07.2021. Earlier, the Decree Holder filed E.P.No.4190/2013 against the Judgment Debtor 3 and the amount to be recovered and the said EP was also withdrawn.

6. The learned counsel further submitted that the petitioner was doing catering services business in the year of 2010-2011 and the Judgment Debtor 5 was employed under the petitioner and Judgment



Debtor 1, who is the wife of Judgment Debtor 5 joined the chit and got the price bid amount by showing the petitioner as a guarantor among others by forging the documents. The Branch Manager of the Decree Holder Company alone instigated Judgment Debtor 1 to participate in the chit and fabricated guarantee deed and the petitioner lodged a Complaint to that effect. The award fixing joint and several liability is illegal and hence, the award obtained by playing fraud is nullity and based on the sole document of promissory note executed by the Judgment Debtor 2, the award passed. It is civil court alone has got jurisdiction.

7. It is the further contention of the learned counsel that the Execution Court failed to see that insofar as the subject arbitral award is concerned it is an *ex-parte* order and too, obtained by playing fraud by the respondent. The execution Court failed to see that any decree or award obtained by practicing fraud has no perpetuation and therefore, ought not to be given perpetuation by proceeding further upon the same. The execution Court failed to see that the Registrar of Chit Funds / Arbitrator of Chit Funds has no inherent jurisdiction to pass the subject award sought to be executed and the infirmity of lack of jurisdiction of the Registrar of Chit Funds / Arbitrator of Chit Funds



is apparent on the face of the very award sought to be executed. The executing court failed to go into (i) the allegation of fraud in obtaining the award sought to be executed and the allegation that Arbitrator of Chits have no inherent jurisdiction to enforce the independent promissory note purporting to pass the said award, for the proof of which elaborate trial proceedings is warranted under Section 47 CPC., but, the executing Court erroneously dismissed the petition filed under Section 47 CPC., at the pre-numbering stage. The executing Court refused to exercise its vested jurisdiction under Section 47 CPC., by erroneously holding for ill-founded reasons that the contention of the petitioner that “the award sought to be executed is nullity for the reason that it was obtained by way of fraud and it was passed without jurisdiction and that it is in-executable, cannot be taken into consideration.

8. Mr.D.Shivakumaran, the learned counsel appearing for the respondent would submit that the petitioner concealed material facts regarding his filing of appeal with condonation of delay against the Award and the same was dismissed by the Appellate Authority and against which, the petitioner filed a Writ Petition in W.P.No.8448/2016 before this Court and this Court gave an



opportunity, but the said opportunity not utilized by the petitioner and he failed to comply with the conditional order to deposit a sum of Rs.2,13,102/- to the credit of execution petition as such, the petitioner is trying to pose as if the Decree Holder is trying to execute the *ex-parte* award, and as if the petitioner is not aware of the same. The suit in O.S.No.7906/2011 filed by the petitioner is nothing but abuse of process of law. The very purpose of the provisions of order 21 R 26(1) of CPC is very limited in purpose to enable a person to approach the proper forum for obtaining orders. In the present case, the petitioner already moved and approached the VI Assistant City Civil Court, Chennai for stay, as such, the present application for the same relief is nothing but abuse of process of law and the present application deserves to be dismissed, as it is not maintainable either in law or in facts. The learned counsel, in support of his contentions, has relied on the decision of this Court in ***Pandi Ambalam Vs. Velayutha Konar*** reported in ***2014 0 Supreme (Mad) 2655*** and yet another decision of this Court in ***K.S.Geetha Vs. Stanleybuck*** and another reported in ***2002 (3) CTC 477***.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.



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10. On perusal of the records it is seen that based on an ex-parte Award passed by the Arbitrator of Chits in ARC.No.682/2012, dated 17.06.2013, E.P.No.2720 of 2021 filed by the Respondent Chit Company, for attachment and sale of petitioner's family's dwelling house. Against which, the petitioner preferred E.A.No.3/2022. The petitioner filed O.S.No.7906/2021, for declaration seeking nullity of the Award, on the file of the learned VI Assistant Judge, City Civil Court, Chennai, which is pending adjudication. The contention of the petitioner is that the Award was obtained by way of fraud played by the Branch Manager / Foreman of the respondent Chit Fund Company and the petitioner is no way connected to the subject chit transaction and never stood as a guarantor thereof nor signed any document relating to the said chit transaction. Further, the petitioner filed E.A.S.R.No.78975 of 2023 on the ground that Award is nullity and in-executable, as it was obtained by playing fraud and without jurisdiction.

11. Admittedly, the petitioner / Judgment Debtor 2, is a guarantor to Judgment Debtor-1. The petitioner received Notice in the arbitration proceedings, but failed to appear, as a result of which,



an Ex-party Award, dated 17.06.2013 has been passed. The Execution Petition in E.P.No.2720 of 2021 is filed in the year 2021. As per the Award, dated 17.06.2013, the Judgment Debtors 1 to 5 are jointly and severally liable to pay to the Decree Holder, for a sum of Rs.2,13,102/- Earlier, the Decree Holder filed E.P.No.4188/2014 for attachment of movable of Judgment Debtor 2, latter, it was closed as not pressed. Earlier, the Decree Holder filed E.P.No.4190/2013 for attachment of salary of Judgment Debtor 3 and the petition was allowed and the attachment made absolute and EP against Judgment Debtor 3 was closed on 09.02.2015. The present EP is filed against the Petitioner / Judgment Debtor 2. In the said EP, the petitioner entered appearance through the counsel and due to non-filing of counter, the petitioner/JD2 was set *ex-parte*. Against which, the petitioner filed a petition to set aside the ex-parte order, which was allowed on 23.12.2022 The petitioner filed a petition for stay the EP till the disposal of the suit in O.S.No.7906 of 2021, in the month of August 2022 and till June, 2023, he has not obtained any stay before the appropriate forum against the Award. Though the Award was passed as early as on 17.06.2013, till date, no amount has been recovered from the Judgment Debtors in liue of petitions filed by the petitioner one after another and thereby protracting the proceedings. From the



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above facts, it is crystal clear that the respondent is struggling to realize the fruits of the order for the past several years. The Court below has rightly dismissed the applications filed by the petitioner/D1 and I have no reasons to interfere with the same.

12. In view of the forgoing reasons, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

09.01.2025

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
vv2 / mpk



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C.R.P.Nos.2865 & 5085 of 2023

To

The X Assistant Judge,
City Civil Court,
Chennai.



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M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER
IN
C.R.P.Nos.2865 & 5085 of 2023

09.01.2025