



C.R.P.(MD).No.2301 of 2022 & Rev.Aplc.(MD).No.79 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD).No.2301 of 2022 & Rev.Aplc.(MD).No.79 of 2023
and C.M.P.(MD).No.11046 of 2022

C.R.P.(MD).No.2301 of 2022

Badhusha ... Petitioner/Respondent/Respondent
/Petitioner/Plaintiff

Vs.

Bagavathi ... Respondent/Petitioner/Petitioner/
Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 24.08.2022 passed in E.A.No.6 of 2022 in E.A.No.1208 of 2015 in E.P.No.16 of 2014 in O.S.No.121 of 2012 on the file of the Principal Sub Court, Tenkasi.

For Petitioner : Mr.S.S.Thesigan

For Respondent : Mr.G.Prabhu Rajadurai

Rev.Aplc.(MD).No.79 of 2023

Badhusha ... Petitioner/Respondent



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Vs.

Bagavathi

... Respondent/Petitioner

PRAYER : Review Application is filed under Order 47 Rule 1 r/w Section 114 of the Civil Procedure Code, to review the order passed by this Court in C.R.P.(MD).No.1151 of 2019, dated 03.03.2022 insofar as the permission granted to the respondent to withdraw Rs.3,50,000/- in Court deposit is concerned.

For Petitioner : Mr.S.S.Thesigan

For Respondent : Mr.G.Prabhu Rajadurai

COMMON ORDER

C.R.P.(MD).No.2301 of 2022 has been filed to set aside the fair and decretal order dated 24.08.2022 passed in E.A.No.6 of 2022 in E.A.No.1208 of 2015 in E.P.No.16 of 2014 in O.S.No.121 of 2012 on the file of the Principal Sub Court, Tenkasi, whereas, Rev.Aplc.(MD).No.79 of 2023 has been filed by the same petitioner to review the order passed by this Court in C.R.P.(MD).No.1151 of 2019, dated 03.03.2022 insofar as the permission granted to the respondent to withdraw Rs.3,50,000/- in Court deposit is concerned.



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2.The facts in brief:

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Suit in O.S.No.121 of 2012 was filed by this revision petitioner against the respondent herein for recovery of Rs.5,10,533/- with subsequent interest and cost based upon a pronote executed by the respondent on 10.01.2012. Suit was decreed as prayed for with cost. Decree was put in execution in E.P.No.16 of 2014. Property was brought for sale and sold. Part of the decree amount was realized in that proceedings. Challenging the sale, the respondent filed E.A.No.1208 of 2015 under Section 47 of the CPC. That was dismissed by the execution Court. Against which C.R.P.(MD).No.1151 of 2019 was filed by the respondent. By the interim order, the respondent was directed to deposit Rs.3.50 lakhs. In pursuance of the same, the respondent deposited the above said amount. But, later, the revision itself was dismissed on 03.03.2022 on merits. At the time of dismissal the respondent was permitted to withdraw the amount deposited by him in the Court.

3.In pursuance of the above said liberty, the respondent filed E.A.No.6 of 2022. The revision Petitioner herein filed the counter objected return of money to the respondent. The execution court by the



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order, dated 24.08.2022, rejected the objection made by the revision petitioner and allowed the E.A. Against which, this revision in C.R.P. (MD).No.2301 of 2022 is preferred.

4.Review application is preferred by the revision petitioner in Rev. Aplc.(MD).No.79 of 2023 to review the order passed in C.R.P.(MD).No. 1151 of 2019, by which, liberty was granted to the respondent herein to move the application for return of money deposited by him.

5.Since the issues are one and the same, both the matters were heard together.

6.Depending upon the outcome of the review application, C.R.P. (MD).No.2301 of 2022 can be taken up.

7.So we will go to the review application.

8.The grievance of the revision petitioner is that only a part of the decree amount was realized by way of sale of the immovable properties



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belongs to the respondent herein. Remaining amount has not been paid by the respondent and in view of the liberty granted to the respondent his right of making application for attachment of the money lies in the deposit is not able to be processed.

9.Per contra, the respondent's counsel submits that absolutely there is no error apparent on the face of the record or there is no perversity or illegality in that order. Amount was deposited in pursuance of the interim order. When the main petition itself is dismissed, automatically the conditional order will go. He is entitled to get back the money. So the order passed by this Court in the above said C.R.P. is not *per se* illegal and there is no error apparent on the face of the records.

10.No doubt, that there is no error apparent on the face of the record. But, at the same time, when E.P. itself is not fully satisfied then the decree holder can have the right of attaching the property lies in the court custody. Such a right is always available to the decree holder. This is the ground for rejecting the objection made by the revision petitioner in the cheque application filed by the respondent.



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11. Even at this juncture, the learned counsel for the revision petitioner would submit that the order of the execution court in the cheque application may be kept in abeyance till further proceedings is taken by him to attach the money. The question which arises for consideration is whether this course is available to this court.

12. As mentioned above, there is no error apparent on the face of the record in that CRP order. In what way the revision petitioner has to realize the decree amount, it is for him to decide. For enabling him to realize the balance decree amount, he cannot use the court proceedings as a tool. But, however, considering the factual circumstances, only a limited clarification can be issued by this Court to the effect that the order passed in the main CRP will not stand in the way of the revision petitioner to take legal proceedings for realizing the balance amount by attachment of the money now lies in the custody of the Court. With this, I find that the review is liable to be dismissed. Therefore, the review application in Rev.Aplc.(MD).No.79 of 2023 stands dismissed. No costs.



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13.For the same reason, I find no error or illegality or perversity in the order passed by the execution court, since liberty is available to the revision petitioner legally. So this revision in C.R.P.(MD).No.2301 of 2022 also stands dismissed, of course with the above said observation and clarification. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal Subordinate Judge, Tenkasi.
- 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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