



C.R.P(MD)No.3146 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.3146 of 2024
and
C.M.P(MD)No.18099 of 2024**

P.Manikandamoorthy

... Petitioner / 1st Defendant

Vs

1.K.Marimuthu

... 1st Respondent / Plaintiff

2.P.Hariharan (Died)

... 2nd Respondent / 2nd Defendant

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C, to call for the records relating to the fair and ex-order dated 04.10.2024 passed in E.P.No.84 of 2019 in O.S.No.10 of 2017 by the learned 1st Additional District Judge, Madurai.

For Petitioner : Mr.S.Bala Karthick



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C.R.P(MD)No.3146 of 2024

ORDER

This Civil Revision Petition is filed to call for the records relating to the fair and ex-order dated 04.10.2024 passed in E.P.No.84 of 2019 in O.S.No.10 of 2017 by the learned 1st Additional District Judge, Madurai.

2. The facts in brief is that the suit in O.S.No.10 of 2017 was filed by the first respondent herein, namely Marimuthu against the revision petitioner and the deceased Hariharan for recovery of Rs.11,23,904/- with subsequent interest and cost. The suit was decreed as prayed for with cost, against both the defendants, directing both the defendants to pay the decree amount with cost and subsequent interest. Against which no appeal was preferred by any one. To execute the decree E.P.No.84 of 2019 was filed by the decree holder against this revision petitioner and the deceased Hariharan. Since Hariharan was dead on the date of E.P., the E.P. was not pressed against Hariharan. The decree holder wanted to proceed against the revision petitioner for recovery of the entire amount. The execution Court by order dated 04.10.2024 permitted the execution petitioner to proceed against the



C.R.P(MD)No.3146 of 2024

revision petitioner herein and passed an order of arrest for realisation of the decree amount. Against which this revision petition is preferred.

3. Heard the revision petitioner.

4. Since the matter was decided to be disposed on merit without sending notice, it was heard. A simple issue was raised by the revision petitioner. According to him, he has deposited Rs.4.25 Lakhs in installments as payment towards his share amount and further amount of Rs.2.50 Lakhs was paid to the decree holder. So he is allowed to be proceeded only in respect of his share alone and beyond that share, he cannot be held responsible or liable to pay the decree amount.

5. But this sort of argument is not at all convincing and acceptable in nature. The decree is joint and several, meaning thereby that both were directed to pay the money jointly or severally. No doubt that legal heirs of Hariharan were not proceeded against for realisation of the decree amount along with this revision petitioner. Whether properties are available to the deceased Hariharan and whether legal representatives



C.R.P(MD)No.3146 of 2024

are available for answering the decree amount, there are no particulars.

But the fact remains that the decree as mentioned above is joint and several and not a several decree apportioning the decree amount between the revision petitioner and the deceased Hariharan. Section 42 of Indian Contract Act reads as under:

"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."

6. As mentioned above as per the Section 42 of the Indian Contract Act, the liability devolves upon the surviving person and the legal representatives of the deceased. In this context, Section 43 of the Indian Contract Act may also be extracted:

"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 and one or more of such joint promisors to perform the whole of the promise."



C.R.P(MD)No.3146 of 2024

Each promisor may compel contribution - Each or two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution - If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares."

7. By virtue of the above said provision, the promisee may proceed against any one of the promisors. After fulfilling the promise, one of the promisors can claim contribution from the other joint promisor. Only on payment of the entire amount, the revision petitioner can proceed against the legal representatives of the deceased Hariharan for contribution. So the plea taken by the revision petitioner is not legally sustainable.

8. With the above said observation, the revision petition is not entertainable even for admission.



C.R.P(MD)No.3146 of 2024

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9. Accordingly, this Civil Revision Petition is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition stands closed.

07.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

- 1.The 1st Additional District Judge, Madurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P(MD)No.3146 of 2024

G.ILANGO VAN, J.

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