

A.Arokiyadoss Vs. Jayapriya Chit Funds Private Limited

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Court : Chennai

Decided On : Jun-20-2013

Judge : K.Ravichandrabaabu

Appellant : A.Arokiyadoss

Respondent : Jayapriya Chit Funds Private Limited

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated : 20.06.2013 Coram
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU C.R.P.No.517 of
2010 and M.P.No.1 of 2010 1.

A.Arokiyadoss 2.

P.Selvamani 3.

N.Pandian .Petitioners -versus 1.

Jayapriya Chit Funds Private Limited, Neyveli 2.

2.

G.Udayarasu .Respondents (R2 is not a necessary party and hence given up)
Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure
Code against the fair and decreetal orders dated 27.11.2009 passed in
R.E.P.No.151 of 2009 in A.R.No.763 of 2007 on the file of the Sub Court, Neyveli.

For Petitioners : Mr.K.M.Ramesh For Respondents : Mr.V.Manisekaran (For R1)

ORDER

This Civil Revision Petition is filed against an order made in R.E.P.No.151/2009 in A.R.No.763/2007 on the file of the Sub Court, Neyveli.

The petitioners are aggrieved against the order passed in the execution proceedings whereby 1/3rd of their salary was directed to be deducted every month for the payment of award amount.

2.The respondents herein filed A.R.No.763/2007 for realisation of sum which is payable to the respondents in pursuant to chit transaction with the petitioners herein.

It appears that an award came to be passed on 23.10.2007 against the petitioners herein whereby a sum of Rs.1,76,789/- with interest came to be awarded in favour of the respondents herein.

For realisation of the said amount, the respondent filed R.E.P.No.151/2009 on the file of the Sub Court, Neyveli.

In the said execution petition, the petitioners herein as respondents filed a counter on 20.10.2008.

However the Court below passed an order in the said execution petition on 27.11.2009, thereby ordering the deduction of 1/3rd salary of the petitioners every month for realisation of the award amount.

Challenging the said order, the present Civil Revision Petition is filed before this Court.

3.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents.

4.A perusal of the order passed by the Court below would show that the same came to be passed on the reason that the petitioners herein did not appear before the Court on the date of hearing, namely, 27.11.2009.

In the very same order, the Court below has also found that the petitioners have filed a counter in the execution petition.

However without referring to the averments made in the counter affidavit, the order came to be passed by the Court below.

Though it appears to be an exparte order, a perusal of the same would indicate that the Court below has referred to the filing of the counter affidavit by the petitioners. When the counter affidavit of the petitioners filed before the Court below is perused, it shows that they have specifically denied that they are receiving a salary of Rs.10,000/- and Rs.7,000/- by the petitioners 2 and 3 respectively and it is also stated that it is only the first petitioner who received the chit amount from the respondents herein and all other petitioners are only sureties.

However they have also stated in the counter that they are willing to pay a sum of Rs.500/- every month.

These things have not been taken into consideration by the Court below while passing the said order.

No doubt the petitioners did not appear on the said date.

At this juncture it is submitted by the learned counsel appearing for the petitioner that the execution petition was initially filed on the file of the Sub Court, Virudhachalam where these petitioners filed their counter.

However when the matter was transferred to the Sub Court, Neyveli, no fresh notice was served on the petitioners from the Sub Court, Neyveli and on the other hand notice was served on the Advocates Association.

The said fact is also referred to in the order passed by the Court below.

Therefore the fact remains that the petitioners were in fact not served with notice of hearing on 27.11.2009 when the matter was taken by the Court below.

Therefore on both grounds the order passed by the Court below is not sustainable.

This non-service of notice on the petitioners has not been taken into consideration by the Court below.

Apart from that their stand taken in the counter affidavit is also not taken into consideration.

Consequently I feel that the petitioners should be given an opportunity to defend the execution petition on merits and accordingly, the order passed by the Court below is set aside and R.E.P.No.151/2009 is remitted back for fresh disposal by giving them due opportunity of hearing.

Accordingly this Civil Revision Petition is allowed and the impugned order is set aside and the matter is remitted back to the Court below for fresh consideration and to pass orders on merits and in accordance with law.

The Court below is directed to dispose of the said E.P.within a period of 30 days from the date of receipt of a copy of this order.

The parties are directed to appear on the date of hearing before the Court below without taking unnecessary adjournments.

5.The Civil Revision Petition is allowed accordingly.

No costs.

Consequently connected miscellaneous petition is closed.

cse To The Sub Court Neyveli

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