

A.Kumaran, and anr. Vs. M/S.Sriram Chits Tamil Nadu Private Limited, and anr.

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Court : Chennai

Decided On : Aug-11-2010

Judge : G.Rajasuria, J.

Acts : Code of Civil Procedure (CPC) - Section 115

Appeal No. : C.R.P.(NPD).No.2646 of 2010 and M.P.No.1 of 2010

Appellant : A.Kumaran, and anr.

Respondent : M/S.Sriram Chits Tamil Nadu Private Limited, and anr.

Advocate for Pet/Ap. : Mr.P.Thiagarajan, Adv.

Judgement :

1. Inveighing the order dated 22.12.2009 passed by the learned X Assistant Judge, City Civil Court, Chennai in E.P.No.3010 of 2008 in A.R.C.No.1646 of 2006, this civil revision petition is focussed.
2. Heard the learned counsel for the petitioner. I am of the view that no notice is required to be ordered to be served on the respondents.
3. The short facts, absolutely necessary and germane for the disposal of this civil revision petition would run thus: The first respondent herein obtained the award dated 11.12.2007, for recovery of money as against three persons,viz., R2 herein

and the revision petitioners 1 and 2. Thereafter E.P.No.3010 of 2008 was filed for attaching the salary of those Judgment Debtors. The principal debtor/judgment debtor-1/R2 herein was set exparte by the lower court and the guarantors/judgment debtors 2 and 4/ the revision petitioners herein resisted the petition by filing a counter stating that the respondent/decree holder/R1 herein did not take any action against the principal debtor/R2 herein and the revision petitioners had taken steps to set aside the award before the Registrar of Chits. However, the lower court by observing that there was no material evidence to show that the revision petitioners herein had taken steps to get set aside the award, rejected the said contention of the revision petitioners and ordered attachment of their salary.

4. Being aggrieved by and dissatisfied with the said order dated 22.12.2009, this revision is filed by Judgment Debtors 2 and 4 on various grounds, the gist and kernel of them would run thus: The grievance of the petitioners is that they are only the guarantors/judgment debtors. However, R2 herein Velu happened to be the principal debtor/judgment debtor and in such a case, it is the bounden duty of the creditor/decree holder to proceed as against the principal debtor and in the event of the creditor unable to recover the dues under the decree from the principal debtor, they could proceed against the guarantors/judgment debtors. However, in this case, the creditor/decree holder/R1 herein is proceeding as against all the three judgment debtors simultaneously and order of attachment of the salary was made by the court concerned, which warrants interference by this court in revision.

5. The point for consideration is as to whether there is any infirmity or illegality in the order passed by the lower court?

5(1). A mere perusal of the impugned order would clearly display and demonstrate that the learned Judge ordered only attachable portion of the salary for attaching and depositing it into the court and in such a case, ex facie and prima facie, this court cannot find fault with such an order. However, the contention of the revision petitioners that the creditor/decree holder should proceed only as against the principal debtor at the first instance and only on its inability to recover from the

principal debtor/judgment debtor, it can proceed against the guarantors/judgment debtors, fails to carry conviction with this court.

6. The law is well settled on this point. There is no embargo under the law to the effect that the creditor/deGREE holder should proceed only against the principal debtor/judgment debtor and not against the guarantor/judgment debtor. Hence, in such a case, I could see no merit in this revision.

7. However, the learned counsel for the revision petitioners would make an extempore submission to the effect that even though the executing court ordered only attachable portion of the salary to be attached within the meaning of Section 60 of the Code of Civil Procedure and sent it to the court, the garnishee is attaching more than that. If that be so, I make it clear, that it is open for the revision petitioners to approach the executing court and air their grievance, whereupon, the executing court is duty bound to analyse as to whether every month only attachable portion of the salary of the revision petitioners are attached or in excess of it. If the court finds that if there is any excess attachment every month, then the executing court should necessarily pass orders so as to restrict the quantum of attachment as per section 60 of the Code of Civil Procedure.

8. With the above observation, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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