
(2013) 06 MAD CK 0241

In the Madras High Court

Case No : C.R.P. No. 287 of 2010 and M.P. No. 1 of 2010

Marry Prakasam and Others

APPELLANT

Vs

Jayapriya Chit Funds Private Limited and Others

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 48

Citation : (2013) 5 MLJ 796

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : P. Mani, for the Appellant; V. Manisekaran, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrabaabu, J.—The petitioners are respondents 1, 2 and 6 in R.E.P. No. 22 of 2009 in A.R. No. 25 of 2008 on the file of the Sub Court, Neyveli. They are aggrieved against the order passed in the execution proceedings in R.E.P. No. 22 of 2009 dated 7.11.2009, whereby 1/3rd of their salary was directed to be deducted for realisation of the award amount in favour of the first respondent herein. The first respondent herein filed A.R. No. 25 of 2008 against the petitioners herein and three others seeking for recovery of a sum of Rs. 3,06,000/- with interest in pursuance to a chit transaction taken place in between the parties. It is seen that an ex parte award came to be passed on 18.2.2008 since the petitioners herein and Others did not appear on that day. For realisation of the said award amount, the respondent herein filed R.E.P. No. 22 of 2009 on the file of the Sub Court, Neyveli under Order 21 Rule 48 CPC to recover the award amount from the salary of the petitioners and Others. In the said E.P., a counter came to be filed by the petitioners 1 and 2 herein and three others by stating that only the first respondent therein availed the chit amount and all others are only sureties. It is also further stated that the said first respondent therein and the first petitioner herein, paid a sum of Rs. 50,000/- on 21.2.2008, Rs. 37,500/- on 28.2.2008 and Rs. 21,000/- on 20.3.2008 during the pendency

as well as after the disposal of A.R. No. 25 of 2008 and the said payments made by the first petitioner herein were not taken into consideration. Therefore they sought for rejecting the execution petition. The Court below by an order dated 7.11.2009 allowed the R.E.P. No. 22 of 2009 and directed to deduct 1/3rd salary of the petitioners in realisation of the decretal amount every month. The said order is under challenge before this Court.

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

3. It is seen that there was an ex parte award passed against the petitioners and three others on 18.2.2008 for a sum of Rs. 3,20,212/- with interest. To realise the said award, E.P. was filed by the respondents. In the said E.P., though the petitioners herein have filed a counter and specifically contended that the first petitioner had paid a total sum of Rs. 1,08,500/- on three different dates both during the pendency of the original proceedings as well as after its disposal, the Court below without considering such contention made by the petitioners in their counter, passed the order by holding that the petitioners herein and three others did not appear on the date of hearing. If it is simply an exparte order, then the petitioners can file a petition to set aside the same by filing appropriate application before the Court below itself. But on the other hand the perusal of the order passed by the Court below show that it is not a simple exparte order but on the other hand it was passed after perusal of the documents as well. When such being the finding of the Court below it cannot be termed as an exparte order and on the other hand it is the one seems to have been passed on merits. If such an order is passed on merits, there is absolutely no reference about the averments made in the counter affidavit filed by the petitioners and Others. Therefore the order of the Court below without considering the contention of the petitioners in their counter affidavit cannot be sustained even though they remained absent on 7.11.2009, as the order passed by the Court below is not an exparte order and on the other hand it came to be passed on perusal of the materials. Therefore I deem it necessary for remitting the matter back to the Court below for considering the case afresh after giving due opportunity to both the parties and pass order in R.E.P. No. 22 of 2009 on merits and in accordance with law. Accordingly, the order passed by the Court below is set aside and the matter is remitted back for taking up R.E.P. No. 22 of 2009 for fresh hearing after giving due opportunity to both the parties. It is made clear that the petitioners herein should appear before the Court on the date of hearing without fail and without taking any unnecessary adjournments. 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 civil revision petition is allowed accordingly. No costs. Consequently connected miscellaneous petition is closed.