

IN THE COURT OF THE SUBORDINATE JUDGE, NEYVELI

Present: Thiru. G. SRI RAMA JEYAM, B.L.,
Subordinate Judge,
Neyveli.

Wednesday, the 3rd day of October 2018
E.P.No. 108 of 2018
in
A.R.No.319 of 2016

Jayapriya Chit Funds (P) Ltd.,
Neyveli Township.

... Petitioner/D.H.

Vs

1. S. Atham Syed
2. K. Sivakumar
3. K.S. Babar Ali
4. V. Selvam
5. K. Veerasamy

... Respondents/J.D.s

Sri. S.K. Devasundhari , Advocate for Petitioner/D.H.
Sri. V. Sampath Kumar, Advocate for Respondents 2,4 & 5

This application came on 14.09.2018 for final hearing before this court and upon hearing the arguments of both sides, upon perusing the available material records, and having stood over till this day for consideration, this court delivers the following

ORDER

The decree holder has filed this application under Order 21 Rule 48 C.P.C. praying this court to attach the salary of the respondents 2,4 & 5.

2. It is the case of the petitioner that in A.R.No. 319 of 2016, an award was passed on 07.11.2016 against the respondents. There is no appeal. In spite of the said award, the respondents have not paid any amount. Now, a sum of Rs.2,83,723/- is due and payable by the respondents as on 18.10.2017. Hence, this petition is filed praying to attach the monthly salary of the respondents 2,4 & 5.

3. The 2nd respondent has filed his counter, which is adopted by respondents 3 & 5, in which, it is contended that the respondents have been receiving lesser salary than the amount stated in the execution petition. In the said amount also, the provident fund amount and gratuity are not deducted. The Petitioner prays to attach more amount from the salary of the respondents against the provision contained in Sec. 60(c) CPC. The salary received by the respondents is not at all sufficient to maintain their family. Interest calculation adopted by the petitioner is not correct. Thus, the above E.P. is not maintainable. The petitioner has already filed another E.P against the respondents in E.P. No.105/2017 and in the said execution petition amount is being attached every month. Any how, the respondents are prepared to pay the decree amount in monthly instalments at Rs. 5,000/-.

4. Now, the point that arises for determination is whether the Salary of respondents 2,4 & 5 could be attached and this petition filed under Order 21 Rule 48 C.P.C. can be allowed?

POINT:-

5. Admittedly, an award was passed in A.R.No. 319 of 2016 on 07.11.2016; there is no appeal. According to the petitioner, a sum of Rs.2,83,723/- is due and payable by the respondents as on 18.10.2017 and that respondents 2,4 & 5, who have been receiving a sizeable salary, have failed to satisfy the award amount.

6. It is the contention of respondents 2,4 & 5 that they receive lesser salary than the amount stated in the execution petition and the amount of gratuity and provident fund are not deducted from their salary and hence, the amount sought to be attached is against the provision contained in Sec. 60 (c) CPC. The said contention cannot be accepted because it is settled law that for the purpose of attachment of salary, the gross salary of the employee alone should be taken into account and in the said amount, after deducting

Rs.1,000/-, in the remaining amount, 1/3rd amount alone should be attached. Hence, the said contention of respondents 2,4 & 5 is rejected.

7. One another contention raised by the respondents is that the interest calculation adopted by the petitioner is not correct and excess amount has been claimed. However, the respondents have not furnished any calculation sheet to substantiate the above contention. Moreover, on perusal of the calculation furnished in the execution petition, it appears to this court that the petitioner has furnished the interest calculation in accordance with the award passed by the Deputy registrar of chits. Hence, the said contention is liable to be rejected.

8. Though, in the counter filed by the respondents, it is stated that the petitioner has already filed another E.P. against the respondents in E.P.No.105/2017 and in the said execution petition attachment is being made from every month, respondents 2,3 & 5 have not produced any documents in support of the said contention. However, this court has verified the records relating to E.P.No.105/2017, on the file of this court and on verification, this court found that respondents 2 & 4 in the present application are the respondents 3 & 4 in E.P.No.105/2017. It is further found that the 5th respondent has not a parte in E.P.No.105/2017. Furthermore, it is also found that no attachment order is in force against respondents 2 & 4 in E.P.No.105/2017 and it appears that they are making monthly payments towards part satisfaction of the award pertaining to E.P.No.105/2017.

9. Since, no attachment order is in force in E.P.No. 105/2017, this court is of the opinion that the present E.P. can be produced against the respondents.

10. No stay has been granted by any court against execution. Thus, this court concludes that there are no merits in contention of the respondents 2,4 & 5 and the petitioner is entitled to execute the award. Since, in the counter, it is stated by the 2nd respondent that the respondents are ready to pay the decree amount in monthly installments, this court is inclined to pass the following order;

In result, the salary of the respondents 2,4 & 5/J.D.Nos.2,4 & 5 is ordered to be attached (after deducting first Rs.1000/- and 2/3rd of the remaining) through their garnishee for 24 months or till the realization of the decree amount, with subsequent interest, whichever is lesser. As the respondents 2,4 & 5 are prepared to pay the award amount in monthly installments, for making payment, Call on 23.10.2018. Till then, attachment warrant is ordered to be kept pending.

Dictated to the Stenographer, directly typed by her in the computer, corrected and pronounced by me in Open Court, this the Wednesday, the 3rd day of October, 2018.

Subordinate Judge,
Neyveli.

Petitioner's side Witness and Documents:

Nil

Respondent's side Witness and Documents:

Nil

Subordinate Judge,
Neyveli.

