

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Wednesday the 19th day of October 2022

E.A.S.R.No.698/2019

in

E.P.No.5/2013

D.V.Venkatesan . . . Petitioner / J.D /Defendant.

/Vs/

N.R.Subramanian . . . Respondent/D.H./Plaintiff.

This petition came up before me in this court for final hearing on 14.10.2022, in the presence of Thiru.John Caleb, Advocate for the petitioner and Thiru.P.S.Mohanakrishnan, Advocate for the respondent, upon hearing the arguments of petitioner's counsel, perusing the entire records and having stood over for consideration till this day this court delivers the following,

ORDER

This is an application filed by the petitioner / judgment debtor under Section 47 of CPC, praying to dismiss the execution petition in EP.No.5 of 2013 in O.S.No.270 of 2012 as null and void, not maintainable, without jurisdiction and also on the ground of in-executable.

2. The case of the petitioner in brief as follows :

The petitioner is the judgment debtor in O.S.No.270/2012 in pursuance to an exparte decree dated 18.01.2013. After receipt of summon in the above suit the petitioner has engaged a lawyer in his choice for legal assistance to him. However, he received the notice in the execution petition in EP No.5/2013 showing the proof that the above suit was decreed exparte within three hearings and counsel failed to appear and contest the case on behalf of the defendant. Immediately the petitioner has engaged another lawyer who was also not helpful to the petitioner as he returned the vakalath together with return of part of the fee paid to him by way of cheque. Thus the petitioner was grossly misled and found not availing the possible legal counselling and assistance by his own counsel and finally filed petition to set aside the exparte decree along with an application to condone the delay of 1152 days in filing such application before this court and also deposed oral evidence substantiating the fact that the counsel mistake the petitioner was kept in darkness on the above proceedings. Because of the fact that the debt which is claimed herein has since already since already discharged and having sufficient proof to that extent above execution petition is absolutely not maintainable and therefore un-executable one. The respondent has fraudulently prevented the petitioner's counsel from appearing in the above

cases on one or other reasons and put the petitioner in gross prejudice. The petitioner has already discharged the debt and the same having suppressed by the respondent, obtained exparte decree, the attempt to prove the discharge was foiled illegally. The respondent / judgment holder is intimidating the petitioner with threat of dispossession through rowdy elements etc., under the guise of enforcement of the above decree which is not at all enforceable one. Hence, the petition, as all the issue of un-executable decree can be tried as if the original suit in this application itself instead of filing separate suit.

3. The point that arises for consideration is whether the application is maintainable under Section 47 of CPC.

4. Point :

This petition is filed under Section 47 of CPC. The execution petition is filed in the year 2013 for sale of property for the amount due by the defendant. The decree holder is unable to realize the decree amount even today. Some how or the other the judgment debtor is able to prolong the matter. Now at last he filed this application claiming that he has already discharged the loan amount which he claimed that suppressed by the decree holder. It is further stated the counsel for the judgment debtor colluded with the decree holder, thereby intimidating the petitioner, thereby threatening of

dispossession by rowdy element. It is alleged that the decree in O.S.No.270/2012 was obtained by fraud and the same is not executable.

5. The petitioner herein who filed this petition under Section 47 CPC, has every right to agitate the questions arising between the parties to the suit relating to execution, discharge or satisfaction of the decree shall be determined by the executing court not by separate suit. But the judgment debtor failed to produce document to prove that he has discharged the loan amount. It is alleged that, the decree holder suppressed the fact is not explained how he suppressed the fact.

6. The allegations made in the application is unacceptable and not proved. The judgment debtor is able to prolong the execution for the past nine years. The judgment debtor ought to have contested the suit during trial but he failed. Now he adopted all the tactics not allowing to execute the decree. The averments in the petition is not substantiated by documentary evidence. The said averments invented for the sake of this application.

7. The judgment debtor already filed petition to set aside the exparte decree by filing condone delay application of 1152 days which was dismissed by this court. Thereafter CRP was filed before the Hon'ble High Court but it appears no stay is granted. Therefore having failed in all the attempts he has filed this application to delay the execution.

8. The claim of the petitioner / judgment debtor that he has discharged the loan amount is not proved by documentary evidence. Therefore there is no merits in this application. This application is liable to be rejected. Further the petitioner is only the power of attorney. He has no locus standi to file this application. Therefore this application has to be rejected.

9. **As the result, petition is rejected.**

Dictated by me to the steno-typist, taken notes and transcribed by her in computer, corrected and pronounced by me in open court, on this the 19th day of October 2022.

Principal District Judge,
Chengalpattu.

Petitioner's side witness and exhibit :
Nil.

Principal District Judge,
Chengalpattu.