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IN THE COURT OF THE PRINCIPAL SUB JUDGE, PALANI

**Present : Thiru. J. Jeya Suthahar, M. Sc., L.L.M.,
Principal Subordinate Judge, Palani.**

Dated this the 20th day of October 2023, Friday

E.P.No.48/2022

in

ACP.No.586/2016

(CNR.NO. TNDG07-000564-2022)

M.Janakaran,

The authorised agent,

Sriram Transport Finance Company Limited,

Palani.

... Petitioner.

/Vs/

1. M.Ramakrishnan

2. P. Marimuthu

... Respondents

This petition came before me for final hearing on 27.09.2023 in the presence of Mr.S.Magudeeswaran and Thiru.G.Vijaykumar, learned Counsels for the Petitioner and Mr.M.Parthiban and Thiru.M.Suresh, learned Counsels for the respondents and upon hearing the arguments on both side and upon perusal of records and having stood over for consideration till this date, this court doth delivers the following:

ORDER

This petition is filed by the petitioner under Order 21 Rules 54 and 66 for execution of the decree passed in ACP.No.586/2016 dated 26.10.2016 by attachment and sale of the petition schedule property in the court auction.

2. The averments in the petition in brief as follows :

The petitioner has filed the petition in ACP.No.586/2016 and obtained the decree on 26.10.2016 directing the respondents to pay a sum of Rs.2,75,387/- with interest and costs. As per the decree the amount due to the petitioner from the respondents is Rs.6,04,113/-. Since the respondents did not come forward to pay the amount as per the decree to the petitioner, he has filed the petition to execute the decree by attachment and sale of the petition schedule property in auction.

3. The averments in the counter statement filed by the 1st respondent and adopted by the 2nd respondent in brief as follows :

This petition is not maintainable in law and on facts. This respondent borrowed a vehicle loan of Rs. 2,42,000/- from the petitioner's company and due to the family circumstances he was unable to repay the instalments and hence handed over the vehicle to the petitioner company. The petitioner company sent a notice to the 1st respondent in 2017 stating that the vehicle was sold for a sum of Rs. 1,50,000/- in the auction and there is a due of Rs. 26,000/-. So the 1st respondent settled the entire amount due to the petitioner. But the petitioner has not adjusted any amount paid by this respondent and has filed this petition by wrongly calculating the amount. The petitioner is liable to file the calculation statement before this court. The petitioner can file execution petition only for the balance amount and he is not entitled to

calculate interest for the entire amount. Further the rate of interest claimed by the petitioner is also not correct. Hence this petition is liable to be dismissed.

4. No oral and documentary evidence adduced on both side in this petition.

5. The point for decision in this petition is whether this petition deserves to be allowed or not ?

6. **Point :**

The petitioner has filed the petition to execute the decree passed in the above case dated 26.10.2016. According to the petitioner, the respondents did not come forward to pay the amount as per the decree to the petitioner and that hence the petitioner has filed the petition to execute the decree by attachment and sale of the petition schedule property in court auction. According to the respondents, the 1st respondent has settled the entire amount due to the petitioner and that the petitioner has filed this petition by wrongly calculating the interest amount and that hence the petition is liable to be dismissed.

7. Though the respondents have claimed that they settled the entire amount to the petitioner, they have not filed any documents to prove the same. There is no particulars in the counter statement as to when the 1st respondent paid the amount by mentioning the specific dates. Hence the contention of the respondents that the 1st respondent settled the entire amount due to the petitioner is not acceptable. Hence this court is of the view that the respondents are liable to pay the decree amount to the petitioner.

8. The petitioner has filed the online copy of the sale deed in the name of the 1st respondent dated 15.12.2021 to show that the petition schedule property belongs to the 1st respondent. It is not denied by the respondents also. Further on perusal of the copy of EC filed by the petitioner it is seen that there is no encumbrance in respect of the petition schedule property. So this court is of the view that there is no impediment for the petitioner to proceed against the petition schedule property to realise the decree amount from the respondents. Hence this court is of the view that this petition deserves to be allowed.

9. In the result, this petition is allowed and the petition scheduled property is ordered to be attached and sold in the court auction sale to realise the decree amount. For attachment by 20.12.2023. Batta in a week.

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me in the open Court, on this the 20th day of October 2023.

**Principal Sub Judge ,
Palani.**

Petitioner side Witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

**Principal Sub Judge,
Palani.**

**Principal Sub Court, Palani
E.P.No.48/2022
in
ACP.No.586/2016
Fair/Draft Order
Date : 20.10.2023**

