

In the Court of the Principal Subordinate Judge of Palani.

Present: Thiru. K. Hariharan, M.L.,

Principal Subordinate Judge, Palani.

Friday, 6th day of January 2023.

E.P. 128/2020

in

C.C.No.12/2014

(CNR.No. TNDG070005812020)

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K. Chinnasamy

... Petitioner/Complainant

/Vs/

Indira

... Respondent/Respondent.

This petition came up for final hearing before me on 19.09.2022 in the presence of Thiru.S.Jeyaraman, the learned Counsel for the Petitioner, Thiru.T.V.Sivakumar, the learned Counsel for the respondent, heard the enquiry on both sides and perusing the records and having stood over till this day for consideration, this court delivers the following:

ORDER

The petition has been filed by the petitioner seeking for to attach and sell the petition mentioned property under Order 21, Rule 54 and 66 of CPC.

2. Petition averments which are found essential for the disposal of the petition is that :

The petitioner has filed a complaint before the Judicial Magistrates Courts under the Negotiable Instruments Act. While the complaint was pending the respondent and the petitioner has come to the Lok Adalath and arrived at a settlement.

After the settlement as agreed the respondent has not paid the amount to the petitioner. Hence the petitioner has come up with the execution petition to attach and sell the petition mentioned property along with interest.

3. **Counter averments which are essential for the disposal of the petition is that :**

The respondent has filed the counter. The respondent in the counter has mentioned that the petitioner cannot seek for interest has claimed in the petition. Further the respondent has also stated that the property is also been encumbered with other encumbrances and mentioned that the petitioner cannot seek for attach and sell the petition mentioned property and sought for to dismiss the petition.

4. Point for determination is whether the petition could be allowed ?

5. No oral or documentary evidence adduced on both sides.

6. **Answer :**

As far as the 1st contention of the respondent is that the petitioner cannot seek for any interest. This Court also considered the same. As far as the present petition is concerned, this Court is only an executing Court. The executing Court cannot go beyond the decree. As far as this petition is concerned the decree here is the award. In the award the parties have not agreed for any interest in the award. Under the circumstances, awarding of interest in the considered view of the Court is not sustainable. Hence the petitioner seeking for interest in the considered view of Court is declined.

6. Now the respondent has mentioned that the petitioner cannot seek for the execution for the reason that the petition mentioned property has been encumbered with respect to other transaction. But as regards the petition mentioned property is concerned the respondent has not come up with any encumbrance certificate to establish that the some other encumbrance are presently pending. Under the circumstances, this Court considers that the petition is considered to be allowed subject to other encumbrances if any.

In the result, the petition is allowed. For attachment batta 20-01-2023.

Dictated to the stenotypist, typed by her, corrected and pronounced by me in the open court this the 6th day of January 2023.

Principal Sub Judge,
Palani.

Petitioner and Respondent Side Witnesses and Documents : Nil.

Principal Sub Judge,
Palani.