



CRP No. 3440 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-07-2026

CORAM

THE HON'BLE MR JUSTICE ABDUL QUDDHOSE

**CRP No. 3440 of 2022
AND
CMP NO. 18259 OF 2022**

M. Pazhaniappan

... Petitioner

Vs

Vinayagam @ Siva (Died)

1. Sundarambal
2. Uma Devi

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the Order and Decreetal Order dated 13.07.2022 passed in I.A.No.76 of 2021 in E.P.No.248/2005 in O.S.No.356/2003 on the file of the Learned Additional Sub Judge at Puducherry by allowing the above civil revision petition.

For Petitioner: Mr.Prakash Adiadam

For Respondents: Mr.S.S.Rajesh

ORDER

This Civil Revision Petition has been filed challenging the impugned order dated 13.07.2022 passed by the learned Additional Sub



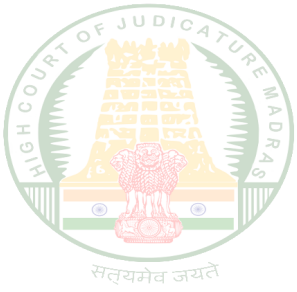
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Judge at Puducherry in I.A.No.76 of 2021 in E.P.No.248 of 2005 in O.S.No.356 of 2003.

2. In the aforesaid order, the application filed by the petitioner/judgment debtor seeking to recall the order of arrest passed against him on 04.09.2021 has been dismissed. The petitioner has challenged the impugned order on the ground that the petitioner does not have the means to pay the decretal debt to the respondents/decreed holders. According to the petitioner, the executing court has ordered for arrest of the petitioner, without any evidence.

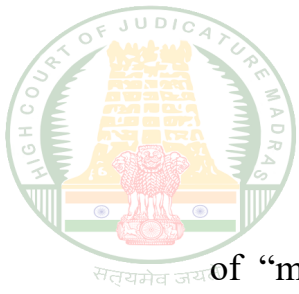
3. Learned counsel for the respondents would submit that the decree passed against the petitioner has attained finality but the execution petition filed by the respondents seeking to execute the decree passed against the petitioner is pending from 2005 onwards. He would also submit that the petitioner is having the means to pay the decretal debt to the respondents, but has deliberately not paid the same and hence, the application filed for arrest is maintainable.



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4. However, as seen from the impugned order, which is also admitted by the learned counsel for the respondent that no oral evidence was taken by the executing court with regard to the financial capacity of the petitioner to pay the decretal debt. When the petitioner categorically contends that he does not have the financial means to pay the decretal debt, necessarily, the executing court ought to have examined the petitioner by way of “means evidence”. Having not examined the petitioner in the witness box with regard to the financial capacity to pay the decretal debt, this Court is of the considered view that the impugned order has to be set aside by this Court and the matter has to be remanded back to the executing court for fresh consideration on merits and in accordance with law after recording the oral and documentary evidence of the petitioner. It is also to be noted that the petitioner has also not produced any documentary evidence before the executing court to substantiate his case that he does not have the means to pay the decretal debt to the respondents as seen from the impugned order. Under the aforementioned circumstances, this Court is constrained to remand the matter back to the executing court for fresh consideration on merits and in accordance with law, after examining the petitioner as a witness by way



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of “means evidence” with regard to his financial capacity to pay the decretal debt to the respondents.

5. Accordingly, the impugned order dated 13.07.2025 passed in I.A.No.76 of 2021 in E.P.No.248 of 2005 in O.S.No.356 of 2003 and the arrest order dated 04.09.2021 passed by the Additional Sub Court at Puducherry are hereby quashed and the matter is remanded back to the very same court for fresh consideration on merits and in accordance with law. When the executing court, namely the Additional Sub Court at Puducherry shall examine the petitioner as a witness by providing an opportunity for the respondents to cross-examine him with regard to the petitioner’s financial capacity to pay the decretal debt to the respondents and thereafter, the Additional Sub Court at Puducherry, after giving due consideration to the oral and documentary evidence of the petitioner and after hearing the arguments of both the counsels, shall pass a final order in E.P.No.248 of 2005 on merits and in accordance with law, within a period of eight (8) weeks from the date of receipt of a copy of this order.



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6. Learned counsel for the petitioner, on instructions, would submit that during the pendency of this revision pursuant to the directions issued by this Court on 27.10.2022, a sum of Rs.5,00,000/- was deposited to the credit of Additional Sub-Judge, Puducherry. On instructions, he would also submit that the petitioner has no objection for the respondent to obtain payment out of the said sum. The respondents are also permitted to file appropriate application before the Additional Sub-Judge, Puducherry seeking payment out of the said sum viz., Rs.5,00,000/- lying on the file of the Additional Sub-Judge, Puducherry, and the Additional Sub-Judge, Puducherry shall order for payment out as prayed for by the respondents.

7. With the above observations and directions, this Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

08-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To
The Additional Sub Court, Puducherry.



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ABDUL QUDDHOSE J.

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