IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

CRP.No. 217 of 2013 ()

AGAINST THE ORDER IN 25.01.2013 IN EP 29/2010 IN OS 924/2008 OF PRINCIPAL SUB COURT, IRINJALAKKUDA DATED 25.01.2013

REVISION PETITIONER/DECREE HOLDER/PLAINTIFF:

HOUSING DEVELOPMENT FINANCE CORPORATION LTD.,
REPRESENTED BY THE RECOVERY OFFICER,
RAVIPURAM BRANCH, M.G.ROAD, KOCHI-682 015.

BY ADV. SRI.C.P.SAJI

RESPONDENT/JUDGMENT DEBTOR/DEFENDANT:
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SUKU, AGED 60 YEARS,
S/O.KUNJUVALAPPIL GOPALAN, KOLAYIDAM DESOM
KALLOORVADAKKUMMURI VILLAGE, KALLOORVADAKKEKAD P.O.,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT-679 562.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

vpv

P.N.RAVINDRAN, J.
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C.R.P.No.217 of 2013
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Dated this the 21st day of November, 2015

ORDER

The petitioner is the decree holder in O.S.No.924 of 2008 on the file of the Court of the Subordinate Judge of Irinjalakkuda. The respondent is the defendant therein. The suit instituted by the petitioner for realisation of money was decreed on 27.5.2009 allowing the petitioner to realise the sum of ₹7,14,814/- with interest at 6% per annum from the date of suit till realisaiton. The defendant was also granted six months' time to pay the decree debt. The judgment decreeing the suit is extracted below:

"JUDGMENT

The exparte order against defendant is set aside as per order in I.A.1910/09. Written statement filed conceding suit claim. Defendant prays for six months time and also for reduction in interest. Suit decreed for Rs.7,14,814/- at 6% interest from the date of suit till realisation from the defendant personally also from the assets of the defendant and by the sale of charged "A" schedule immovable properties with costs. Defendant is given six months to pay up the decreed amount."

2. The respondent did not discharge the decree debt within six months. The petitioner thereupon filed E.P.No.29 of 2010 under

Order XXI Rule 30 of the Code of Civil Procedure by arrest and detention of the judgment debtor in the civil prison and by attachment and sale of his property. After the execution petition was filed, the judgment debtor deposited the sum of ₹1,60,000/- in installments. The decree holder had simultaneously initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for sale of the security and realised the sum of ₹3,50,000/-. As on the date on which the execution petition was filed, the amount due under the decree was ₹7,81,261/-. With the realisation of the sum of ₹5,10,000/- in the manner indicated above, the balance amount due under the decree as on the date of the execution petition came down to ₹2,71,261/-. In the execution court, the judgment debtor contended that his properties have been attached in the very execution petition and therefore he is not in a position to sell the property and discharge the decree debt. He also contended that he is an engine driver in the Railways and that his income is not sufficient to discharge the decree debt. He also offered to discharge the decree debt in monthly installments of ₹2,000/-.

3. In the execution court, an employee of the petitioner was examined as PW1 and the judgment debtor was examined as RW1. The execution court considered the rival contentions and held that the judgment debtor is not in a position to discharge the decree debt in

lump and accordingly directed him to discharge the decree debt in installments of ₹2,000/- per mensem. The execution court also ordered that in the event of failure, the decree will be executed by his arrest and detention in the civil prison. The said order which was passed on 25.01.2013 is under challenge in this civil revision petition filed under section 115 of the Code of Civil Procedure.

4. I heard Sri.C.P.Saji, learned counsel appearing for the petitioner. Though the respondent has been served, he has not entered appearance. The relevant portion of the impugned order reads as follows:

> *"3. I have heard both sides. The following point arise for consideration and decision:-*
>
> *Whether judgment debtor has sufficient means to discharge the decree debt?*
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> *4. <u>The point:</u>-*
>
> *PW1 will say that a sum of Rupees 7,81,261/- is due. That was the total amount due and after filing execution petition judgment debtor has paid Rupees 1,60,000/-. A sum of Rupees 3,50,000/- was realized by sale of the mortgaged properties of the J.D. under the Securitization Act. Therefore the balance amount is Rupees 2,71,261/-. Apart from that Judgment debtor is having a building and appurtenant area of five cents. It has a carpet area of 2000 sq. feet. It is attached in this execution petition. It is claimed that judgment debtor had obtained Rupees ten lakhs by taking voluntary retirement. It was his retirement benefits. The Judgment Debtor will say*

that he had retired from service on 1.6.11. Out of the retirement benefits, he had paid Rupees 1,70,000/- to the decree holder. The rest of the amount was used to discharge other debts. He does not have sufficient means to discharge the decree debt. He had sustained an injury in a motor accident on 17.7.12. He has to maintain his wife, children and aged mother. During cross-examination he will say that on retirement he had received retirement benefits of Rupees 8,49,000/- and his residential building is mortgaged to ICICI bank. The retirement benefits are not liable to attachment. Such provisions are made to protect the beneficiaries from vagrancy. While considering the means of the petitioner the said fact has to be taken into account. Out of the retirement benefits he had received, he had paid Rupees 1,70,000/- to the decree holder. He has to take care of his wife and children and mother. Still he has not disclosed what is his pension. He cannot be expected to sell his residential property as the same is under the attachment by the decree holder.

5. Under the said circumstances it is found that the judgment debtor is not in a position to discharge the decree debt by payment in lump sum. But he can discharge the decree debt by monthly installments at the rate of Rupees 2,000/-. It is found that the judgment debtor is not in a position to discharge the decree debt in lump sum but he is having the capacity to pay decree debt at the rate of Rupees 2,000/- per month. The point is answered accordingly.

6. The judgment debtor shall continue to pay decree debt at monthly instalments of Rupees 2,000/- per month. On failure to do so the decree will be executed by his arrest and detention in civil prison."

5. A reading of the impugned order discloses that the judgment debtor is a pensioner. The quantum of pension which he is drawing is not disclosed. He had admittedly received the sum of ₹8,49,000/- by way of retirement benefits. The execution court has proceeded on the basis that the retirement benefits are not attachable and that from out of the said amount, the judgment debtor had paid the sum of ₹1,60,000/- to the decree holder. Notwithstanding the fact that the judgment debtor has not disclosed his pension and the fact that the immovable property belonging to the decree holder is under attachment in the very same execution petition, the execution court has held that as he is not in a position to discharge the debt in lump, he should be allowed to pay the decree debt in monthly installments of ₹2,000/-. If the decree debt is sought to be discharged in monthly installments of ₹2,000/-, the decree holder will have to wait for 136 months to realise the decree debt remaining unpaid. The future interest accruing on the amount payable under the decree will remain unpaid even thereafter. The judgment decreeing the suit discloses that the defendant had undertaken to pay off the decree debt in six months. The court below ought to have in my opinion proceeded with the execution petition by sale of the attached property, instead of passing an order which will compel the decree holder to wait for more than ten years to realise the decree debt. The impugned order cannot

therefore in my opinion be sustained.

I accordingly allow the civil revision petition, set aside the order passed by the Court of the Subordinate Judge of Irinjalakkuda on 25.01.2013 in E.P.No.29 of 2010 in O.S.No.924 of 2008 and restore the execution petition to file. The execution court shall dispose of the execution petition afresh, by proceeding against the attached property. The execution court shall, having regard to the fact that the decree was passed on 27.05.2009 and the execution petition was filed in the year 2010, dispose of E.P.No.29 of 2010 in a time bound manner and in any event within an outer limit of six months from the date of receipt of a copy of this order. The execution court shall ensure that notice of the execution petition is served afresh on the respondent. Registry to communicate a copy of this order to the execution court and the respondent.

Sd/-
P.N.RAVINDRAN
JUDGE
/true copy/

P.A. To Judge

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