IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

CRP.No. 403 of 2013 ()

E.P.NO.450 OF 2012 IN O.S.NO.104 2010 ON THE FILE OF THE SUBORDINATE JUDGE OF KOZHIKODE

REVISION PETITIONER(S)/RESPONDENT:

P.M.MUZAMMIL, SON OF ABDULLA KOYA
M/S. SLIPPERS AGENCIES MAZA, PUTHIYARA
KOZHIKODE - 673004
KASABA AMSOM AND DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S)/PETITIONER:

CANARA BANK WITH HEAD OFFICE AT BANGALORE
BY ITS PRINCIPAL OFFICER, MANAGER
FEROKE BRANCH,
FEROKE AMSOM DESOM OF KOZHIKODE TALUK.
PIN 673 631.

R. BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R. BY ADV. SRI.P.GOPINATH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.403 of 2013

Dated this the 9th day of June, 2015

<u>O R D E R</u>

The judgment debtor is the revision petitioner. He challenges the order passed by the executing court ordering his arrest and detention.

2. As per the decree, the respondent/decree holder is entitled to realise a total sum of ₹ 5,21,115/- with interest. The decree holder filed the Execution Petition to realise the decree amount by arrest and detention of the judgment debtor. The judgment debtor pleaded no means. On behalf of the decree holder, PW1, the Bank Manager, was examined and Exhibit A1 was marked. The judgment debtor was examined as RW1.

3. It has come out in evidence that the judgment debtor owns a house very near to the Mofusil bus stand, Kozhikode in an extent of 8 cents of land. He is the proprietor of M/s.Slippers Agencies Maza, Puthiyara, Kozhikode-4, and that is the address shown in the revision petition as well. According to the judgment debtor, he is having some agency business and he gets only ₹10,000/- per month from the business. He has not produced any accounts of his business. The judgment debtor contended that ₹10,000/- is required for his livelihood. The court below took note of the fact that the judgment debtor is having a house in the heart of Kozhikode town situated in an extent of 8 cents of land and that house is a very valuable asset. It was also noticed by the court below that the judgment debtor is doing business and even according to him, he is getting ₹10,000/- per month.

4. It is true that the burden of proof to show that the judgment debtor has the means to pay the decree debt is on the decree holder. In **Kuppuswamy v. P.G.Menon** **(1992(2) KLT 203)**, it was held as follows :

> "6. It is true that the burden of proving the circumstances specified in Section 51 CPC lies on the decree holder. Strict proof of every detail is not necessary. The decree holder should give some indication or details of the properties or assets of the judgment debtor. It is competent to the executing court, on the materials placed before it, to draw an inference as regards the statutory finding required by Section 51 of the CPC. The question whether there are circumstances justifying the order for arrest is one of fact. See R.M.Jassawala v. Amulya Chandra (AIR 1940 Allahabad 494). I am of the view that the requirement of Section 51 CPC will be satisfied if the judgment debtor has means to pay the debt either from liquid resources or assets belonging to him which can reasonably furnish such resources. It is open to the execution court, on the materials placed before it, to

draw an inference as regards the statutory findings required by the section. If there is prima facie material on record about the means of the judgment debtor, it is for the judgment debtor to rebut it. He is in a better position to know of his assets. See John Chacko v. Thomas Varghese ILR 1970(2) Kerala 109. The crucial words in clause (b) of the proviso to Section 51 CPC "the means to pay the amount of the decree or substantial part thereof" only mean that the judgment debtor should have realisable assets from which the necessary money can be raised or realised to pay up the decree amount. (See Xavier v. Canara Bank Ltd. 1969 KLT 927 and Mohamed Ibrahim v. State Bank of Travancore - AIR 1964 Madras 233). Where it is proved or admitted or otherwise evident that the judgment debtor owns or possess a house or has got interest therein, the normal presumption is that he is able to pay the debt either by sale or mortgage or creating other encumbrance of the house. In such circumstances, it is open to the judgment debtor to rebut the presumption and prove either that he does not own or possess the house or that no alienation or encumbrance is possible of that property."

5. When it is shown that the judgment debtor has realisable asset, he has to show that the asset is not sufficient for realisation of the decree debt. The facts and circumstances available in the case would show that the judgment debtor has the means to pay the decree debt or a substantial portion thereof and he has either neglected or refused to pay the decree debt.

6. When the revision was admitted, an interim order was passed on 18.7.2013 granting conditional stay, by which the judgment debtor was directed to pay a sum of ₹1,00,000/- to the decree holder in two instalments. It is seen from the order dated 26.9.2013 that the judgment debtor complied with the said direction.

7. The learned counsel for the respondent/decree holder submitted that as on 1.11.2014, the total amount due

would come to ₹6,82,482/-. This is the version of the decree holder and the correct amount due is to be worked out by the executing court.

8. I do not find any ground to interfere with the order passed by the executing court. All the relevant facts were considered by the court below while arriving at the finding that the judgment debtor has the means to pay the decree debt. Lastly, the learned counsel appearing for the petitioner submitted that the judgment debtor may be permitted to pay the decree debt in 24 monthly instalments. Taking into account the facts and circumstances of the case, the revision petitioner/judgment debtor is permitted to discharge the decree debt in 18 monthly instalments. The revision petitioner/judgment debtor shall pay the first instalment of ₹35,000/- on or before 15th July, 2015. The judgment debtor

shall pay 17 monthly instalments at the rate of ₹35,000/- and the whole of the balance amount shall be paid on the date on which the 18th instalment is payable. The monthly instalments shall be payable on or before the 15th of every month, commencing from 15th July, 2015. To facilitate the payment as above, the warrant directed to be issued against the petitioner shall be kept in abeyance. If the petitioner/judgment debtor commits default in payment of any of the two consecutive instalments, the instalment facility granted to him shall stand cancelled and the whole of the balance due would be payable forthwith. In such a situation, the order directing warrant to be issued against the judgment debtor shall stand revived.

9. The learned counsel for the judgment debtor submitted that the judgment debtor would be making all efforts to settle the case amicably and it is submitted that this order

may not stand in the way of settlement. It is made clear that this order would not stand in the way of the parties settling the disputes on their own terms.

The Civil Revision Petition is disposed of as above.

K.T.SANKARAN
JUDGE

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