IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

CRP.No. 696 of 2013 ()

AGAINST THE ORDER IN E.P.NO.352 OF 2012 IN O.S.NO.456 OF 2010
DATED 25.10.2013 PASSED BY THE ADDITIONAL SUB COURT, IRINJALAKUDA

REVISION PETITIONER(S)/1ST JUDGMENT DEBTOR:

SURESH
S/O.NELLIPARAMBATH KARTHIKEYAN
T.K.S.PURAM DESOM, METHALA VILLAGE
KODUNGALLUR TALUK.

BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENT(S) : DECREE HOLDER/JUDGMENT DEBTORS 2 & 3:

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1. ANJALI KURIES AND LOANS (PVT.LTD)
PADAKULAM, METHALA VILLAGE
KODUNGALLUR TALUK-698003

2. BHASI
S/O.KIZHAKKOTTAYIL GOPALAKRISHNAN
VALAPPAD VILLAGE AND DESOM, CHAVAKKAD TALUK
PRESENT ADDRESS: BHASI
S/O.KIZHAKKOTTAYIL GOPALAKRISHNAN
C/O.SINDHU BAR, KODUNGALLUR 698 003.

3. RAJAN
S/O.THUNDIVILA KRISHNA PILLAI
ARAKULAM DESOM, METHALA VILLAGE
KODUNGALLUR TALUK. 698 003.

R1 BY ADV. SRI.V.M.KRISHNAKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P.No.696 of 2013 B

Dated this the 10th day of June, 2015

O R D E R

The first judgment debtor in E.P.No.352 of 2012 in O.S.No.456 of 2010, on the file of the court of the Additional Subordinate Judge, Irinjalakuda, challenges the order dated 25th October, 2013 passed by the executing court by which the petitioner was directed to be arrested and detained in civil prison in execution of a money decree passed against the petitioner and others.

2. The decree was passed on 20.9.2012. Execution Petition was filed on 13.12.2012, claiming a sum of ₹2,07,316/- including interest and cost, by the arrest and detention of the judgment debtors. Judgment debtors 2 and 3 are said

to be the guarantors.

3. The petitioner/first judgment debtor pleaded no means to pay the decree debt or substantial portion thereof.

4. Before the court below, the decree holder was examined as PW1 and the petitioner/first judgment debtor was examined as RW1. Exhibits A1 to A1(c) and B1 to B4 were also marked.

5. At the time when the loan was applied on 10.6.2009, the petitioner stated in his loan application that he was working as the Manager of Sindhu Bar run by his father and that he was earning ₹50,000/- per month. It was also stated that the petitioner was having an asset of ₹25 lakhs. The case of the petitioner is that he left the job in 2009 and he has no job or

income. He also stated that he has no properties. Further case of the petitioner is that Exhibit A1 loan application was signed by him, but the details regarding his salary and assets were not filled up by him. The court below disbelieved the case put forward by the petitioner that he was not aware of the contents of Exhibit A1. The petitioner stated that he has undergone a surgery for Hernia in 2012 and he was directed to take rest for one year. The petitioner has not denied that his father is running Sindhu Bar. He has also no case that he was not working as Manager of Sindhu Bar. If the petitioner has left the job at Sindhu Bar, he should produce the documents to prove the same and therefore, the burden of proof is on the petitioner. The petitioner did not discharge the burden of proof.

6. The learned counsel for the petitioner submitted that there is no clear finding by the court below that the judgment

debtor has had since the date of decree, the means to pay the decree debt or a substantial portion thereof and he refused or neglected to pay the decree debt. The court below found in the order thus :

> "On analysing the evidence adduced by the decree holder as well as the first judgment debtor I find that judgment debtors 1 to 3 have means to pay the decree amount with interest either in lumpusm or substantial portion and they neglected in repayment."

7. The finding is that the petitioner has the current means to pay. It is also found that he neglected to repay the amount. The requirement of law under the proviso to Section 51 of the Code of Civil Procedure is satisfied in the case and the court below has arrived at a finding to that effect.

8. The learned counsel for the petitioner relied on the

decisions in **Abraham v. Maharashtra Apex Corporation Ltd. (2011(3) KLT 15)** and **D.Viswanathan and another v. The Karnataka Bank Ltd. (AIR 1988 Kerala 274)**. The facts of the present case differ from the facts involved in the aforesaid judgments and I do not think that those judgments would apply in the present case.

9. From the materials available in the case, the court below was justified in negativing the plea of no means raised by the revision petitioner. No ground is made out to interfere with the well considered order passed by the court below. Lastly, the learned counsel for the petitioner submitted that the petitioner may be permitted to discharge the decree debt in 15 monthly instalments. The learned counsel for the respondents submitted that a reasonable number of instalments may be granted to the petitioner.

10. Taking into account the facts and circumstances of the case, I am of the view that the petitioner can be permitted to discharge the decree debt in 12 monthly instalments. The petitioner shall pay ₹15,000/- each in the first 11 months and the entire balance amount shall be paid as the last instalment. The first instalment shall be paid on or before 15th July, 2015 and the balance instalments shall be paid on or before 15th of the succeeding months. If the petitioner commits default in payment of any two consecutive instalments, the whole of the balance would fall due for payment in which case the order passed by the court below directing issue of warrant against the petitioner will stand revived.

The Civil Revision Petition is disposed of as above.

K.T.SANKARAN
JUDGE

csl