

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.796 OF 2015
AND M.P.NO.1 OF 2015

A.Raja ... Petitioner

Vs.

Malliga ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair order and decretal order in E.P.No.3678 of 2011 in O.S.No.1831 of 2004 dated 01.11.2014 on the file of the X Assistant City Civil Judge, Chennai.

For Petitioner : Mr.G.Appavu

ORDER

This Civil Revision Petition is directed against the order dated 01.11.2014 passed in E.P.No.3678 of 2011 in O.S.No.1831 of 2004 by the learned X Assistant Judge, City Civil Court, Chennai.

2.The respondent had instituted the suit in O.S.No.1831 of 2004 against the petitioner for recovery of a sum of Rs.1,00,000/- together with interest. The suit was decreed on 05.06.2006.

3.The respondent / decree holder filed Execution Petition in E.P.No.3678 of 2011 to recover the balance amount of Rs.99,765/- by arrest and detention of the judgment debtor in Civil Prison. The decree holder has given evidence stating that the judgment debtor is having own house and he is presently working in a private company. The judgment debtor has also received a lump sum amount on attaining the age of superannuation and he is also drawing good salary from the private company.

4.The petitioner / judgment debtor has also admitted that after his retirement, he is working in Railways and earning Rs.300/- per day. The

Executing Court, after considering the evidence of the decree holder and the stand taken by the judgment debtor, allowed the application on 01.11.2014. Challenging the order, the present Civil Revision Petition is filed.

5.Mr.G.Appavu, learned counsel for the petitioner submitted that the respondent has obtained an ex parte decree on the basis of a blank cheque issued by the petitioner; that even in the evidence, the decree holder has admitted that she received blank cheque from the judgment debtor and that the decree holder has not proved the means of the judgment debtor and there is no finding by the Executing Court.

6.I am not able to agree with the contentions of the learned counsel for the petitioner. The Executing Court has considered the evidence of the decree holder and the case of the judgment debtor that after retirement, he is working in Indian Railways Catering and Tourism Corporation and receiving Rs.300/- per day before ordering arrest. It is not in dispute that after filing of the Execution Petition, the judgment debtor has retired from the Indian Railways and received the retirement benefits. The decree holder is also receiving pension.

7. In view of the above facts, I do not find any illegality or infirmity in the order impugned in this Civil Revision Petition. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.02.2015

Index : Yes/No
Internet : Yes/No
TK
To

The X Assistant Judge
City Civil Court
Chennai.

K.KALYANASUNDARAM, J.

TK

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