



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2015

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (NPD) (MD)No.2752 of 2014

and

M.P.(MD)No.1 of 2014

1.Paramasivam

2.Kasthuri

:Petitioners

Vs.

:Respondent

Murugesan

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code praying to set aside the order passed by the learned District Munsif, Nilakottai, in E.P.No.1 of 2014 in O.S.No.89 of 2009, dated 24.09.2014.

For Petitioners : Mr.A.Hariharan

For Respondent : Mr.N.S.Karthikeyan

ORDER

The suit is one for recovery of money, which was decreed. The decree holder had filed E.P.No.1 of 2014 and sought for the arrest of the judgment debtor, which was allowed. Challenging the same, the above revision is filed.

2. The learned counsel appearing for the petitioners contended that before passing an order of arrest, the Court should have conducted an enquiry about the means of the judgment debtor. Without enquiry about the means, the Executing Court cannot order arrest.

3. When a decree holder persists for arrest of judgment debtor, the Court has to follow the procedure before ordering arrest. If the judgment debtor has no means to pay the decree amount, subsequent to the date of decree and if the Court finds that there is no *mala fide* or dishonesty on his part, arrest and detention cannot be made. However, in this case, enquiry regarding the means and the capacity of the judgment debtor to pay the decree amount has not been ascertained by the Executing Court, but, plainly, ordered arrest of the judgment debtor. Therefore, on that ground, the order impugned herein is liable to be set aside.

4. Accordingly, the impugned order dated 24.09.2014 passed in E.P.No.1 of 2014 in O.S.No.89 of 2009, on the file of the learned District Munsif, Nilakottai, is set aside and the matter is remitted to the Executing Court for fresh enquiry. However, the enquiry has to be completed on or before 28 February, 2015.

5. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/



To
The District Munsif,
Nilakottai.

Copy to: The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.N.S.Karthikeyan, Advocate in SR.3190

+1CC to M/s.A.Hariharan, Advocate in SR.2633

C.R.P. (NPD) (MD) No.2752 of 2014

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sml

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