

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.11.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1833 of 2014 &

M.P.No.1 of 2014

Sezhian

... Petitioner

v.

Pon.Sukumaran

... Respondent

Civil Revision Petition filed under section 115 of CPC against the fair and decretal order of the I Additional Subordinate Judge's court at Erode, dated 09.04.2014 in E.P.No.20 of 2013 in O.S.No.326 of 2006.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.M.Guruprasad

ORDER

Challenging the order passed in E.P.No.20 of 2013 in O.S.No.326 of 2006, on the file of I Additional Subordinate Court, Erode, the judgment debtor has filed the above Civil Revision Petition.

2. The respondent-plaintiff filed the suit in O.S.No.326 of 2006 for specific performance alternatively, for refund of advance amount of Rs.4,14,100/- along with interest. The suit was contested by the defendants.

3. After contest, the Trial Court, decreed the suit partly by rejecting the relief of specific performance and decreeing the alternative relief of refund of advance amount of Rs.4,14,100/- together with interest.

4. Pursuant to the decree passed in O.S.No.326 of 2006, the respondent-decree holder filed an Execution Petition in E.P.No.20 of 2013 to arrest the judgment debtor.

5. The judgment debtor filed his counter stating that he has no means to pay the EP amount.

6. In order to prove the means of the judgment debtor, the decree holder examined 2 witnesses and marked 6 documents viz., Exs.P1 to P6. On the side of the judgment debtor, R.W.1 was examined, however no document was marked. Ex.P3 is the certified copy of the dealership certificate and Exs.P5 and P6 are certified copies of the patta issued in favour of the judgment debtor.

7. By examining P.W.1 and P.W.2 and producing Exs.P1 to P6, the decree holder had proved that the judgment debtor is having sufficient means to discharge the EP amount.

8. On the contrary, R.W.1 has not established that he is not having means to pay the debt amount. R.W.1 has also stated that the properties standing in the name of his father has been inherited by his mother and the same should be construed only as ancestral properties. In respect of the said properties, Exs.P5 and P6 pattas were issued in favour of the judgment debtor.

9. Since the decree holder has proved that the judgment debtor is having sufficient means to pay the EP amount and in spite of the same, neglected to pay the said amount, the Execution Court has rightly ordered arrest. I do not find any error or irregularity in the order passed by the Executing Court.

10. This Court, in M.P.No.1 of 2014, by order dated 14.05.2014, while granting an order of interim stay, directed the judgment debtor to deposit a sum of Rs.1,00,000/-, to the credit of O.S.No.326 of 2006, on the file of I Additional Subordinate Court, Erode, within a period of three weeks.

11. The learned counsel appearing for the respondent-decree holder submitted that the revision petitioner-judgment debtor may be permitted to pay the decree amount in 8 monthly installments.

12. The learned counsel appearing for the petitioner-judgment debtor submitted that the submission made by the learned counsel for the respondent may be considered.

13. Having regard to the submissions made by the learned counsel on either side, the petitioner-judgment debtor is permitted to pay the entire amount payable by him to the respondent-decree holder, after deducting the amount already paid by him, in 8 monthly installments commencing from 10th December 2016. The petitioner-judgment debtor should pay the monthly installment on or before 10th of every succeeding month. In the event of petitioner-judgment debtor committing default in paying any two consecutive installments, in such an event, the respondent-decree holder can proceed with the order passed in E.P.No.20 of 2013 and seek for arrest of

the judgment debtor. If the judgment debtor pays the monthly installments without any default, the order of arrest passed by the I Additional Subordinate Court, Erode in E.P.No.20 of 2013 in O.S.No.326 of 2006 shall be kept in abeyance. In any event, the suspension of order passed in E.P.No.20 of 2013, shall only upto July 2017.

With these observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

11.11.2016

Rj

To

The I Additional Subordinate Court,
Erode

M. DURAISWAMY,J.,

Rj

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