

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.1342 of 2016

and

CMP.No.7550 of 2016

Edwin William

.. Petitioner

Vs

L.Mahalingam

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 16.12.2015 made in E.A.No.236 of 2015 in E.P.No.2 of 2015 on the file of the learned Subordinate Judge at Uthagamandalam and allow the Civil Revision Petition.

For Petitioner

:Mr.G.Jayachandran

ORDER

The judgment debtor in E.P.No.2 of 2015 in O.S.No.211 of 2012 on the file of Subordinate Judge of the Nilgiris at Udhagamandalam, is the revision petitioner. The respondent herein is the decree holder.

2. The suit in O.S.No.211 of 2012 has been filed for recovery of a sum of Rs.4,69,000/- with interest and costs. The suit was decreed on 28.08.2014.

3. The decree holder has filed an Execution Petition in E.P.No.2 of 2015 in O.S.No.211 of 2012, under Section 21 Rule 37 of C.P.C., and as the judgment debtor did not file the counter, order of arrest was passed.

4. Thereafter, the judgment debtor has filed an application E.A.No.236 of 2015 in E.P.No.2 of 2015 under Order 21 Rule 106 of C.P.C., requesting the Executing Court to set aside the order of arrest and exparte passed against him on 20.08.2015.

5. By an order dated 16.12.2015, the Executing Court has allowed the application, subject to the judgment debtor depositing a sum of Rs.1,17,250/-, which is 25% of the decree amount, and the entire decree amount being Rs.4,69,000/-. This amount of Rs.1,17,250/- was ordered to deposited on or before 07.01.2016.

5.1. This order is under challenge in this Civil Revision Petition.

6. The learned counsel for the revision petitioner would submit that the Executing Court would not ought to have directed the judgment debtor to deposit 25% of the decree amount as pre-

condition to set aside the exparte order, especially having regard to the defense taken by the judgment debtor in the written statement. It is alleged that the Court should have given lenient treatment, considering the fact that the judgment debtor is a government servant and that he was suffering from heart attack during the time at which he ought to have file his counter.

5. This contention can be accepted only to a limited extent. When the judgment debtor is a government servant, he is expected to know the consequences of non-appearance before the Court. Moreover, the decree is a contested decree and his defense has been already considered. Therefore, there is no purpose in contending that his defense in the suit has to be considered.

6.The Executing Court cannot go beyond the terms of the decree.

6.1.However, considering the contention that the judgment debtor is employed only as a lineman, this Court can consider only extension of time for payment.

6.2. Thus, the order passed by the Executing Court is modified, extending the time as well as duration of payment as

described below.

7. Accordingly, the judgment debtor is permitted to pay the amount of Rs.1,17,250/- in eight installments i.e., at the rate of Rs.14,657/- per month, on or before fifth day of each month commencing from May 2016, to the credit of E.P.No.2 of 2015 on the file of Subordinate Judge of the Nilgiris at Udhagamandalam. Subject to this modification, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2016

ds

Note : Issue order copy 29.04.2016

To:

The Subordinate Judge
Udhagamandalam.

S.VIMALA,J.

ds

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