

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.103 of 2017
and C.M.P.No.495 of 2017

Vijayan

.. Petitioner

Vs.

1.Venugopal
2.Jayabalan

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 20.10.2016 made in E.P.No.20 of 2012 in O.S.No.50 of 2006 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Petitioner : Mr.S.Vediappan

ORDER

This civil revision petition is filed against the fair and decreetal order dated 20.10.2016 made in E.P.No.20 of 2012 in O.S.No.50 of 2006 on the file of the Principal District Munsif Court, Tiruvannamalai.

2.The first respondent herein as a plaintiff filed a suit in O.S.No.50 of 2006 for recovery of money due on promissory note. The suit was partly decreed on 14.07.2010 and against the same, the first respondent/plaintiff has preferred A.S.No.43 of 2010, which was allowed on 08.08.2011 and the suit was decreed in its entirety. Then the first respondent/plaintiff has filed the execution petition in E.P.No.20 of 2012. The said execution petition was allowed on 20.10.2016 and arrest was ordered. Challenging the same, the second defendant has preferred the revision.

3.Learned counsel for the petitioner would submit that the petitioner/second defendant has no means to pay the decree amount. Further, the plaintiff/decreed holder, who was examined as P.W.1, has not produced any document to show that the second defendant has possessed sufficient means to pay the decree amount. But the executing Court has not considered the above aspect. Therefore, he prays for setting aside the order of arrest.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

5.The first respondent as a plaintiff filed a suit in O.S.No.50 of 2006 for recovery of money due on promissory note. The suit has been decreed only for Rs.5,000/- with interest and costs, against which, the first respondent/plaintiff preferred A.S.No.43 of 2010. The appeal was allowed on 08.08.2011 and the suit was decreed in its entirety. Challenging the same, no second appeal was preferred by the petitioner. So the decree and judgment passed by the first appellate Court is final and the petitioner ought to have paid the entire decree amount. As the decree and judgment was passed on 08.08.2011 in A.S.No.43 of 2010, the first respondent/plaintiff has filed the execution petition in the year 2012 to realise the amount of Rs.65,508/- along with interest. The petitioner herein has filed a counter and contested the same. But the Executing Court after considering the arguments advanced by both sides and also the evidence of P.W.1/deGREE holder, ordered for arrest by holding that the first respondent/plaintiff has proved that the petitioner/second defendant has sufficient means to pay the decree amount. Against which, the present revision is preferred by the petitioner/second defendant.

6.At the time of arguments, the learned counsel for the petitioner would submit that the petitioner is ready to deposit

Rs.5,000/- with interest as agreed. But the above argument does not hold good. Admittedly, the suit was decreed in its entirety, as per the decree and judgment passed in A.S.No.43 of 2010 dated 08.08.2011, against which, no second appeal was preferred by the defendants. So the decree and judgment passed in A.S.No.43 of 2010 is final and that the petitioner herein ought to have paid the entire decree amount along with costs and subsequent interests. But the argument of the learned counsel for the petitioner that the petitioner is now ready to pay Rs.5,000/- with interest that too without making any arrangement, does not hold good.

7.Furthermore, the petitioner has drawn my attention through page No.38 of the typed set of papers, wherein the cross-examination of P.W.1 finds place. P.W.1/plaintiff himself admitted that he has not filed any document to show that the petitioner/second defendant has possessed movable and immovable properties and he has owned flour mill and car.

8.Considering the aforesaid circumstances of the case, no second appeal was preferred by the defendants challenging the decree and judgment passed in A.S.No.43 of 2010, dated

08.08.2011 and that it is final. So the petitioner ought to have paid the decree amount. But the execution petition was filed only for arrest. So it is the duty of the first respondent/plaintiff/deGREE holder to prove that the judgment debtor/second defendant has sufficient means to pay the decree amount. Then only, the plaintiff is entitled to get the order of arrest.

9.It is pertinent to note that in para-36 of the typed set of papers, P.W.1 stated about the address of the flour mill run by the second defendant/petitioner herein at No.133, Chengam road in the name and style of Kumaran flour mill and the second defendant has also rented out his car and thereby, he is earning Rs.10,000/- per month. But it is true, the plaintiff in his cross-examination, has fairly conceded that he has not filed any document to prove the above facts. It is to be noted that the petitioner herein, who is the judgment debtor, was also not get into the witness box to deny the above said facts and also no contra evidence for the same. In such circumstances, the trial Court after considering all the aspects in proper perspective manner came to the correct conclusion that the petitioner herein has possessed sufficient means to pay the decree amount. But the petitioner with a malafide intention to prevent the

R.MALA,J.

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decree holder to enjoy the fruits of the decree, wantonly refused to pay the decree amount by stating that the plaintiff has not proved that he has sufficient means. Since the first respondent/decree holder has proved that the petitioner/second defendant has sufficient means to pay the decree amount, the decree holder is entitled to get the order of arrest. Under such circumstances, I do not find any merits in the revision. The decree and judgment passed by the first appellate Court is hereby confirmed and consequently, the civil revision petition is dismissed.

10.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2017

Index:Yes/No

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To

The Principal District Munsif Court, Tiruvannamalai.

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