

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 28.08.2017****CORAM****THE HONOURABLE MR.JUSTICE M.GOVINDARAJ****CRP.(NPD)No.3069 of 2017**

M/s. Forbes and Company Tea Brokers,
A Partnership Firm having its place of
Business at Forbes House, Coonoor,
Rep. by its duly constituted Power of Attorney Agent
Mr. Thomas Mathews,
S/o. Mr.M.D. Mathews,
S. Syrian Christian,
No. 15, High Field Cottage,
Walkers Hill Road, Coonoor,
The Nilgiris District.

... Petitioner

VS.

1. M/s. B.P.V. Classic Tea Factory Private Limited
A Private Limited Company rep by its
Managing Director D.K. Bhaskaran,
S/o. D. Krishnamoorthy,
No. 401/ A, Kotagiri Road,
Kattabettu Post, The Nilgiris.

2. D.K Bhaskaran.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure Code, to set aside the Fair & Decretal Order dated 06.06.2017 made in E.A. No. 66 of 2017 in E.P.No. 31 of 2017 in O.S.No. 2 of 2005, on the file of District Court, The Nilgiris at Udthagamandalam.

For Petitioner : M/s. P.T.Asha
for Saravabhauman Associates

ORDER

This Civil Revision Petition has been filed against the order passed in E.A No. 66 of 2017, rejecting the request of the decree-holder to issue arrest warrant, without due notice to the petitioner.

2. As per Order XXI Rule 22 (3) of the C.P.C, the fact remains that there is a decree against the respondent/judgment debtor on an earlier occasion and if Execution Petition was also filed, the arrest would not be executed because of judgment debtor.

3. It is the contention of the decree-holder that whenever notice was ordered, the judgment debtor evades arrest in payment towards decree. Unless the order of arrest is issued, without giving notice, it cannot be executed and if notice is issued, the respondent/judgment debtor will abscond or leave the local limits of the jurisdiction of the Execution Court. However, the Execution Court has stated that averments made in the affidavit are not satisfactory.

4. On a reading Order XXI Rule 22 (2) of the C.P.C, it is stated that in the interest of the Justice, *the Execution Court can execute the decree without issuing notice for the reasons to be recorded, if it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of Justice.*

5. In the instant case, the judgment debtor has appeared before the Execution Court and submitted that he has paid more than Rs.50 lakhs, but however, whenever notice was ordered, the judgment debtor evaded arrest in payment towards decree and if notice is issued, the respondent/judgment debtor will abscond or leave the local limits of the jurisdiction of the Execution Court. Therefore, the petitioner seeks for a direction to issue arrest warrant and detain the 2nd respondent/judgment debtor/defendant, without notice of appearance before the Trial Court. We do find that the order passed by the Execution Court is without proper application of the mind. It is evident that the judgment debtor himself admits that he has paid a sum of Rs. 50 Lakhs.

6. In such circumstances, the discretion of the Execution Court, as per Order XXI Rule 22 (2) of the C.P.C to execute the decree, would meet the ends of Justice. The contention of the

petitioner that if the order of arrest is issued without giving notice, it cannot be executed and if notice is issued, the respondent/judgment debtor will abscond or leave the local limits of the jurisdiction of the Execution Court, has some force. Therefore, the Execution Court is directed to execute the decree, by importing the provision under Order 22 Rule 2 of C.P.C against the Judgment debtor/respondent herein. Hence the order passed in E.A. No. 66 of 2017 in E.P. No. 31 of 2017 in O.S.No. 2 of 2005 is set-aside and Execution Court is directed to proceed with the case, as stated supra.

7. With above direction, this Civil Revision Petition is disposed of. No costs.

28.08.2017

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

bsm

To

The District Court,
The Nilgiris,
Udhagamandalam.

M.GOVINDARAJ.,J.

bsm



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