

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.2408 of 2011
and
M.P.No.1 of 2011

Manohar

.. Petitioner

vs

Arul Bakiyaraj

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the order dated 18.03.2011 made in E.P.No.64 of 2009 in O.S.No.98 of 2007 on the file of the learned I Additional Subordinate Judge, Cuddalore.

For Petitioner : Mr.D.Baskar

For Respondent : Mr.K.A.Ravindran

ORDER

This revision is directed against the order of the learned I Additional Subordinate Judge, Cuddalore in E.P.No.64 of 2009 in O.S.No.98 of 2007 dated 18.03.2011, allowing the petition and ordered arrest of the petitioner.

2. The respondent has filed a suit against the petitioner in O.S.No.98 of 2007 and obtained money decree. To execute the same, the respondent has filed E.P.No.64 of 2009 under Order 21, Rule 37 of C.P.C.

3. Resisting the Execution Petition, the petitioner stated that as against the decree, he had preferred appeal and the appeal proceedings are not yet finalised and therefore, the decree cannot be executed.

4. Finding that the appeal preferred by the petitioner was dismissed, the Executing Court ordered arrest of the petitioner. Challenging the order of the Executing Court, the petitioner preferred this revision.

5. Assailing the order of the Executing Court, the learned counsel for the petitioner contended that the Executing Court failed to see that means have to be proved by affidavit and then on oath by examining the respondent and it had grossly erred in passing the impugned order without hearing the counsel.

6. Per contra, the learned counsel for the respondent submitted that only after satisfying means by way of affidavit, the Executing Court ordered arrest of the petitioner and there is no infirmity in the impugned order.

7. On a perusal of the order impugned, it is seen that the Executing Court has not recorded finding that in spite of means, the petitioner wilfully has not paid the decree amount. The Executing Court simply stated since means proved by affidavit, arrest by 19.4.2011.

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8. It is settled that an order of arrest of judgment debtor without a finding with regard to means of judgment debtor and that in spite of means, the judgment debtor has wilfully not paid the decree

amount is not sustainable.

9. Admittedly, in the case on hand, before ordering arrest, the respondent has not given any evidence qua means. Mere production of affidavit is not enough and the decree holder should examine himself in proving the means affidavit.

10. It appears that on 12.7.2011, this Court granted interim stay on condition that the petitioner shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh and fifty thousand only) before the Executing Court, on or before 23.8.2011, failing which, stay shall stand automatically vacated. Upon the petitioner making deposit, the Executing Court shall keep the amount in a fixed deposit in anyone of the nationalised bank, until further orders.

11. The learned counsel for the respondent submitted that pursuant to the order of this Court dated 12.7.2011, the petitioner had deposited Rs.1,50,000/- before the Executing Court and the same was lying in the credit of E.P.No.64 of 2009.

12. Since the Second Appeal preferred by the petitioner was

also dismissed by the judgment dated 12.12.2016 and the decree is executable and that the Executing Court while ordering arrest failed to examine the respondent to prove the means, this Court is of the view that it would be appropriate to direct the Executing Court to record evidence of the respondent to prove the means.

13. Since Rs.1,50,000/- deposited by the petitioner is lying in the credit of E.P.No.64 of 2009, the respondent is directed to file an application for withdrawal of the said amount before the Executing Court to appropriate part of the decree amount. On such application being filed, the Executing Court is directed to pass orders on the application within a period of 15 days from the date of filing of such application.

14. In the result, the Civil Revision Petition is allowed by setting aside the order dated 18.3.2011 passed in E.P.No.64 of 2009 in O.S.No.98 of 2007 on the file of learned I Additional Subordinate Judge, Cuddalore. E.P.No.64 of 2009 is remitted back to the Executing Court for the purpose of examining the respondent to prove means to pay the decree amount and then pass further orders. The Executing Court is directed to do the said exercise within a period of two months

from the date of receipt of a copy of this order by affording an opportunity to both sides. It is made clear that if the petitioner wants to settle the amount due under the decree, he can very well settle after adjusting Rs.1,50,000/- deposited into the Court. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2017

vs

Note: Issue order copy on 21.01.2019

Index : Yes

To

The I Additional Subordinate Judge,
Cuddalore.



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M.V.MURALIDARAN, J.

VS



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