IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.03.2017

CORAM

THE HON'BLE DR.JUSTICE **P.DEVADASS**

C.R.P.(NPD)No.3194 of 2011
and
M.P.No.1 of 2011

S.K.Venkatachalapathy .. Petitioner

Vs

R.Sivasamy .. Respondent

Prayer: Civil Revision Petition filed under section 115 of CPC against the Fair and decretal order dated 27.07.2011 made in E.P.No.186 of 2008 in O.S.No.73 of 2005 on the file of the First Additional Sub Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Kithamalai Kumaran

O R D E R

This Civil Revision Petition filed by the Judgment Debtor arose out of Order of detention passed by the Execution Court/First Additional Sub Judge, Erode in E.P.No.186 of 2008 in O.S.No.73 of 2005.

2. The defendant indebted to the plaintiff on a promissory note to the tune of Rs.2,00,000/-. As he has failed to repay the principal and the interest accrued thereon, the plaintiff has instituted the suit in O.S.No.73 of 2005 as against the defendant for

recovery of the suit amount. Pending suit, the plaintiff filed I.A.No. 374 of 2005, seeking attachment of the immovable property measuring about 34 cents. The defendant having given an undertaking that he will not alienate the property, recording the same the trial Court dismissed the said Interlocutary Application.

3. Ultimately, on 05.02.2005, the suit was decreed. The plaintiff became the decree holder and the defendant became the Judgment Debtor. Thereafter, the decree holder levied execution in E.P.No.186 of 2008, by arresting the Judgment Debtor and detaining him in Civil prison.

4. The Decree Holder let in means evidence. The Judgment Debtor let in no means evidence. The Execution Court upon consideration of the oral and documentary evidence found that the Judgment Debtor had means, namely, 34 cents of land and discharged a Bank loan and executed a money decree as against one Sakthivel in the District Munsif's Court, Kodumudi, Erode District, however he has no intention to discharge the decree debt. Thus, ordered his arrest. However, deferred the arrest by giving him one month time to pay the amount to the decree holder in default suffer arrest.

5. Aggrieved, the Judgment Debtor has directed this revision.

6. The learned counsel for the revision petitioner contended that in ordering the arrest of the Judgment Debtor, the trial court has completely violated the basic

provisions relating to arrest under Order 21 Rule 31 of Civil Procedure Code.

7. In this connection, the learned counsel for the petitioner cited ***Arumugham -vs- Muthukumaraswami (2014(1) MWN (Civil) 396)***.

8. The learned counsel for the revision petitioner further contended that actually the decree holder had not established that the Judgment Debtor has current financial ability to discharge the decree debt. Thus, the impugned order is flawed.

9. On the other hand, the learned counsel for the respondent would submit that the Judgment Debtor is a guilty minded person. After the institution of the suit, to defeat the realisation of the decree debt, he had settled his 34 cents of property in favour of his wife. However, still the property is with his family. Further he has lot of money by executing the money decree as against one Sakthivel. Thus, he has sufficient means, but he has no mind to pay the decree debt. He has failed, neglected and refused to pay the decree debt. Thus, the order of the Execution Court is not flawed.

10. I have considered the rival submissions perused the impugned order, the materials on record, and the decision cited.

11. I have already given succinctly factual matrix. Let us not duplicate it.

12 . One of the mode by which a decree can be executed is seeking the arrest and

detention of a Judgment Debtor in Civil Prison. A combined reading of Section 51 (e) of CPC and Order 21, Rule 37, to 40 C.P.C. would show importation of principles of Natural Justice to the Code of Civil Procedure. Simply because the decree holder had asked for the arrest of the Judgment Debtor, the court cannot mechanically order the arrest. An opportunity to the Judgment Debtor by issuing a show cause notice as to why he should not be arrested and sent to civil prison should be given. The condition precedent is that the decree holder must establish to the hilt that the Judgment Debtor had financial capacity. Thereafter the Execution Court should give an opportunity to the Judgment Debtor to let in no means evidence. Only thereafter, applying its mind the Execution Court has to record a finding that inspite of having means, the Judgment Debtor has failed and refused to pay the decree debt, it there is acceptable evidence to that effect. ***Arumugham -vs- Muthukumaraswami*** reported in ***2014(1) MWN (Civil) 396*** is exactly on similar lines.

13. The word arrest is a bad word and nobody like to be arrested. There is no glamor or pride in being arrested, of course, there are certain exceptions, but they are exceptional cases. We need not bother about them.

14. Now keeping the above principles in our view, let us come to our case. Two grounds have been taken by the Execution Court to order the arrest and detention of the revision petitioner in Civil prison.

15.Firstly, the Judgment Debtor has 34 cents of land.

16. As the Judgment debtor has already given an undertaking that he will not sell the property nor he cannot sell the property and raise money out of that. Of course after the institution of the suit, he has transferred the said 34 cents by way of a settlement deed in favour of his wife. Naturally his wife like him but not the decree holder. The point is whether it could be considered as a means. On this aspect, there is complete dearth of materials. There is no details as to whether the lands were put to use and whether any crops were raised, if no,what was the nurture, what was the yield of it, whether he had any surplus after meeting the necessities of his life and survival. No documentary evidence such as VAO certificate, Adangal extracts etc., have been filed. People proclaims that they are big landlords, nearly a Zamindar as they are owning several miles of land, but, they are not getting anything out of it, may be barren or in the possession, terraquous or home grabbers land. They are name sake LandLords. Almost beggars.

17. In these circumstances, the 34 cents of land taken by the Executing Court as instance of means of the Judgment Debtor is not correct.

18.The second point taken by the Execution Court to send the Judgment Debtor to Jail execution of the money decree by the present revision petitioner as against one Sakthivel in the court of the District Munsif, Kodumudi, Erode District. What was the money the Judgment Debtor had is not relevant. But what he is is the appropriate criteria to order his arrest. When the decree against Sakthivel was executed and what was the money the revision petitioner had raised out of that? Whether there any surplus

was left for the Judgment Debtor? Whether it is a case on hand to mouth?

19.From the evidence it is not clear. But, one thing is clear that the Judgment Debtor is heavily indebted to several person. There were scramble for his property and cash by many of his creditors. The present decree holder aware of this, but he seems to have lagged behind them. Thus, the property taken into account by the Execution Court is also not correct.

20. Now the net result is that the decree holder has miserably failed to establish that the Judgment Debtor had means, financial capacity to pay the decree debt but not minded to discharge.

21. In the facts and circumstances the impugned order of the Trial Court is flawed.

22. Thus, we have to upset the impugned order, directing the arrest of the revision petitioner. Ultimately ordered as under

(1) This revision succeeds.

(2) The impugned order passed by the Execution Court/First Additional Sub Judge, Erode in E.P.No.186 of 2008 in O.S.No.73 of 2005 dated 27.07.2011 is set aside.

(3) However, no costs.

21.03.2017

Index : Yes/No
Internet:Yes/No

arr/rna

To

1. The Principal District Judge, Erode.
2. The I st Additional Sub Judge, Erode.

DR.P.DEVADASS,J

arr/rna

C.R.P.No.3194 of 2011

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