

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.5062 of 2011
& M.P.No.1 of 2011

P.Sundaram

.. Petitioner

Vs.

A.Kannappan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.09.2011 in R.E.P.No.426 of 2009 in O.S.No.640 of 2004 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.D.Shivakumaran

For Respondent : Mr.S.Saravanan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 23.09.2011 in R.E.P.No.426 of 2009 in O.S.No.640 of 2004 on the file of the Principal District Munsif Court, Salem.

2. The petitioner/judgment debtor is defendant, respondent/decree holder is the plaintiff in O.S.No.640 of 2014. The respondent filed the suit for recovery of money and the said suit was decreed on 19.12.2015. The petitioner did not pay the decretal amount. The respondent filed E.P.No.426 of 2009 on the file of the Principal District Munsif, Salem for arresting the petitioner and detaining him in the civil prison.

3. According to the respondent/decree holder, petitioner is running a Tea Stall and he is earning Rs.35,000/- per month and also having a sum of Rs.2,00,000/- in hand. The respondent also stated that the petitioner has sufficient means to pay the decretal amount.

4. The petitioner contended that he is working in a tea shop and he is not owning any Tea Stall and he is not having any cash as alleged by the respondent and he is not having any sufficient means to pay the amount. He has stated that he filed I.P.NO.52 of 2009, against the respondent to declare himself as insolvent. The petitioner also stated that he is suffering from kidney failure and taking treatment.

5. Before the learned Judge, both the petitioner and respondent were examined as witnesses and insolvency petition was also filed.

6. The learned Judge considering all the materials on record and evidence let in by the parties, concluded that the petitioner has means to pay the decretal amount and ordered arrest.

7. Against that order dated 23.09.2011 made in E.P.No.426 of 2009, the present civil revision petition has been filed by the petitioner.

8. The learned counsel appearing for the petitioner submitted that the learned Judge erred in holding that pendency of Insolvency petition is not a bar to execute the decree by ordering arrest and detaining him in prison. The petitioner has deposed that he has no means to pay the amount. The respondent has not proved that the petitioner has means to pay the amounts. No document was produced by the respondent to show that the petitioner is running a Tea Stall and is earning Rs.35,000/- per month and he is also having sufficient means to pay the amount.

9. Per contra, the learned counsel appearing for the respondent submitted that the respondent has proved that the petitioner has sufficient means to pay the amount and Insolvency Court did not pass any orders in favour of the petitioner that no decree can be executed against the petitioner.

10. Heard both the learned counsels appearing for the petitioner and the respondent and perused the materials available on record.

11. The respondent contends that the petitioner is running a Tea Stall and he is earning Rs.35,000/- per month and is also having Rs.2,00,000/- cash in his hand. The petitioner denied the same and his contention is that he is working as a coolie in a tea stall for daily wages. But, he has not mentioned the name of the shop where he is working and how much he is getting as salary. Further, in the proof affidavit he has stated that he has no means to pay the decretal amount. But he stated that he cannot pay the decretal amount in one lump sum. The petitioner also did not obtain any order of protection in the Insolvency petition filed by him.

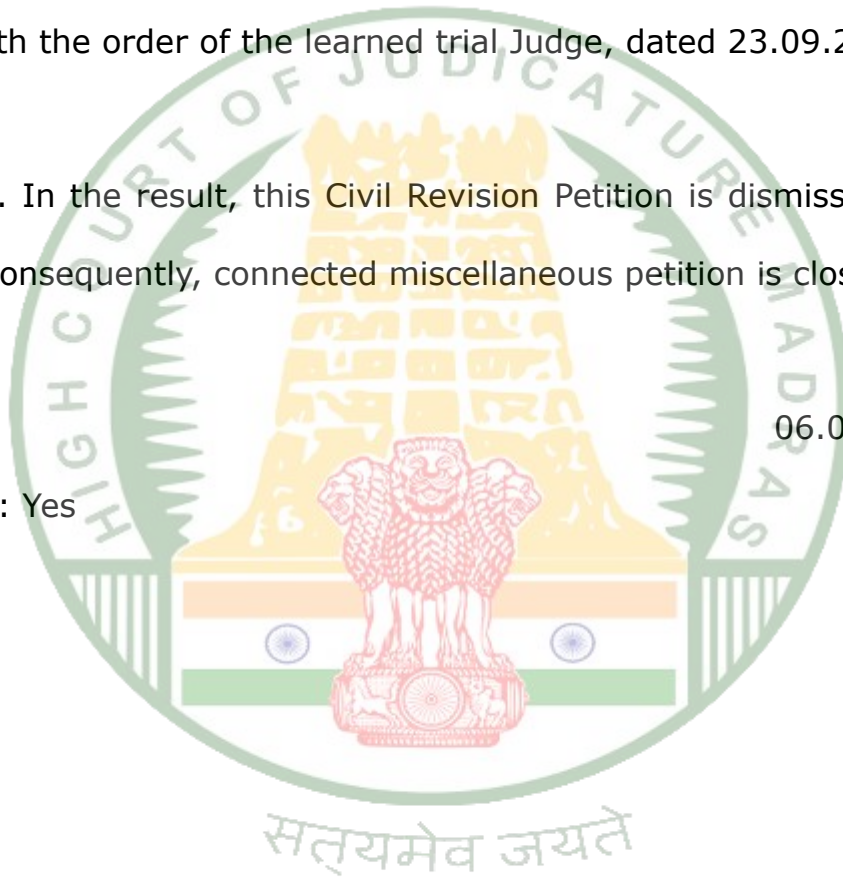
12. Considering all these facts, the learned Judge ordered arrest by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 23.09.2011.

13. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes

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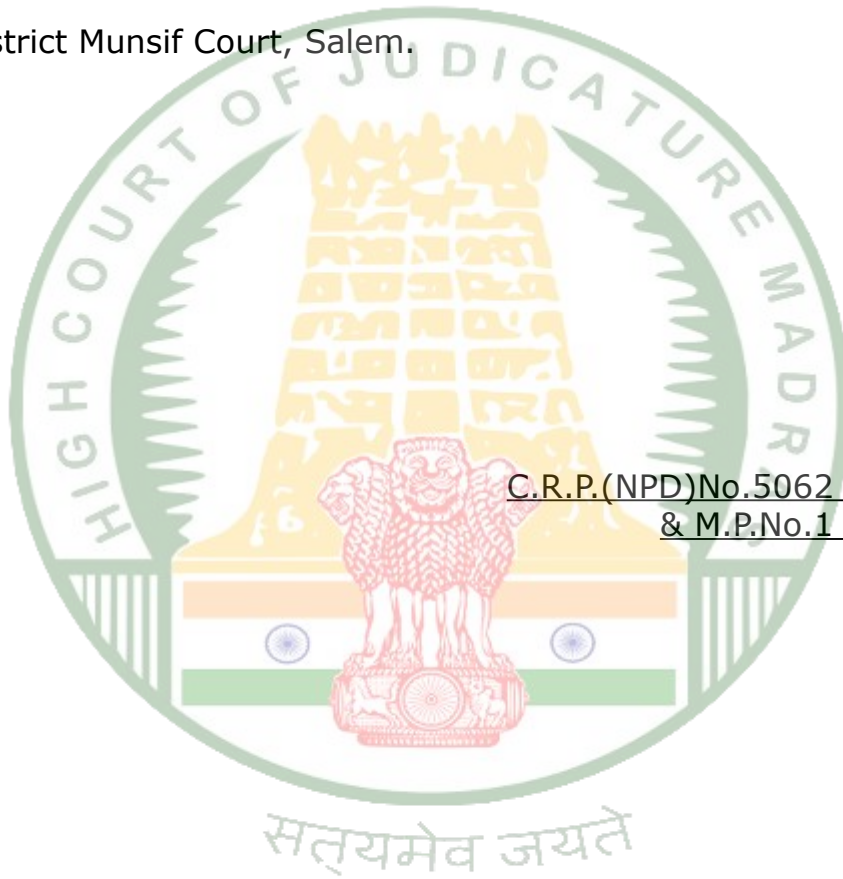
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V.M.VELUMANI, J.

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To

The District Munsif Court, Salem.



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