

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No. 3140 of 2012
and M.P.Nos.1 and 2 of 2012

Manohar

...Petitioner

Vs

1.Margadarsi Chits Private Limited
'Kumaran Building'
No.AA-152, 3rd Avenue, Anna Nagar
Chennai 600 040.

2.T.S.Sivam
3.Sampathraj Bekmar
4.K.Srinivasan
5.P.Varadaraj

...Respondents

[R2, R4 and R5 given up vide order of Court dated 19.08.2016]

Prayer:- Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decree in EP No.726 of 2009 in O.S.No.687 of 2005 dated 24.07.2012 on the file of the X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Gopalan
For Respondents : Mr.D.Shivakumaran [for R1]

ORDER

The learned X Assistant Judge, City Civil Court, Chennai directed arrest of the petitioner, notwithstanding the contention taken that he has no means to pay the decree debt. The order is under challenge, at the instance of the

judgment debtor.

2. I have heard the learned counsel for the petitioner. I have also heard the learned counsel for the first respondent.

3. The first respondent filed Execution Petition in E.P.No.726 of 2009 before the City Civil Court, Chennai to execute the award dated 29 December 2016 in ARC No.687 of 2005. The prayer in the Execution Petition was to arrest the petitioner and put him in civil prison on account of his failure to pay the decree debt. Before the Executing Court, the petitioner filed a counter taking up the plea of 'no means'.

4. The first respondent produced xerox copies of the Income Tax Returns and a copy of the agreement marked as Ex.P5 to show that the petitioner was having necessary means to pay the decree debt. The trial Court, believed those documents and directed arrest of the petitioner.

5. The documents marked as Exs.P1 to P3 were all xerox copies of the Form-2 relating to three different years. Those returns would not show that the petitioner is having property as on the date of which the order was passed by the learned trial Judge. Similarly, the other two documents also would not amount to proof regarding possession of the property by the petitioner. The learned Executing Judge, in a very mechanical way allowed

the application and directed the arrest, notwithstanding the clear stand taken by the petitioner that he has no means. I am, therefore, of the view that the impugned order is liable to be set aside.

6. In the result, the order dated 24 July 2012 is set aside. The learned trial Judge is directed to give reasonable opportunity to the petitioner and the first respondent to submit their respective case and pass fresh orders on merits and as per law.

The civil revision petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

09.06.2017

Gms

To

X Assistant Judge, City Civil Court, Chennai.

K.K.SASIDHARAN,J.

gms

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