

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.928 of 2015

Swati @ Nagina

...

Petitioner

Vs.

P.Rajesh Kumar Bagmar

...

Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in E.A.No.52 of 2013 in E.P.No.11 of 2009 dated 15.12.2014 by the learned First Additional Family Court at Chennai.

For Petitioner : Mr.A.Edwin Prabakar

For Respondent : Mr.G.Saravanan

ORDER

This Civil Revision Petition is filed against the order passed in E.A.No.52 of 2013 in E.P.No.11 of 2009 dated 15.12.2014 by the learned First Additional Family Court at Chennai.

2. The petitioner is respondent and the respondent is the petitioner in E.A.No.52 of 2013 in E.P.No.11 of 2009 in FCOP No.600

of 2001. The petitioner filed E.P. No.11 of 2009 for issue of warrant to the judgment debtor / respondent to return the articles as listed in the schedule to the petitioner/deGREE holder. The petitioner filed the said E.P. under Order XXI Rule 32 r/w Section 151 CPC. Originally, the first Additional Family Court, Chennai issued warrant of arrest of the respondent dated 18.11.2013. The respondent filed E.A.No.52 of 2013 under Order XXI Rule 26(2) CPC to recall the Non-Bailable Warrant issued against him. The respondent filed CRP(NPD) No.3112 of 2014 before this Court and this Court, by order dated 25.08.2014 directed the I Additional Family Court, Chennai to dispose of the E.A.No.52 of 2013 within a period of fifteen days from the date of receipt of the copy of the order. The I Additional Family Court, Chennai, by order dated 15.12.2014, allowed E.A.No.52 of 2013 filed by the petitioner and recalled the non-bailable warrant issued against the respondent/judgment debtor dated 18.11.2013.

3. Against the said order dated 15.12.2014 made in E.A.No.52 of 2013 in E.P.No.11 of 2009, the petitioner has filed the present Civil Revision Petition.

4. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

5. The necessary facts for deciding the issue in this Civil Revision Petition are as follows -

5(a) The petitioner and the respondent are husband and wife. The respondent filed FCOP No.600 of 2011 under Section 9 r/w Rule 1 (i) of Hindu Marriage Act for restitution of conjugal rights. In the said O.P., the petitioner filed I.A.No.1545 of 2001 seeking for a direction to the respondent to return 1200 gms of gold and 18 kgs of silver articles. The petitioner filed counter in FCOP No.600 of 2001 with counter claim for divorce. The said counter claim was numbered as I.A.No.227 of 2007. The First Additional Family Court, by order dated 12.02.2004 allowed I.A.No.1545 of 2001 directing the respondent to return the articles mentioned in the schedule. The First Additional Family Court, Chennai also allowed I.A.No.228 of 2007 and granted divorce. The respondent filed CMA No.1068 of 2009 against the order granting decree of divorce and filed CRP No.1869 of 2009 challenging the order of dismissal made in I.A.No.227 of 2007 filed by the respondent to set aside the order

dated 12.02.2004 made in I.A.No.1545 of 2001 directing the respondent to return the gold and silver articles.

5(b) The Division Bench of this Court heard both the CMA as well as CRP together and by common judgment dated 06.06.2013 dismissed both the CMA No.1068 of 2009 as well as CRP No.1868 of 2009. Against the said judgment, the respondent filed SLP Nos.26359 & 26360 of 2013 before the Apex Court. The Hon'ble Apex Court, by judgment dated 13.09.2013 dismissed both the SLPs. Meanwhile, the petitioner initiated criminal proceedings before the Chief Metropolitan Magistrate, Egmore, Chennai and on two occasions, search was ordered by the CMM, Egmore, Chennai. On the first search, 102 gms. of gold and 6 kgs of silver articles were recovered from the respondent and on the second search, 123.760 gms. of gold and 6.511 kg. of silver articles were recovered from the respondent. The entire list of gold and silver articles claimed by the petitioner is described in Schedule "A". Articles seized in the first search is described in Schedule 'B' and the articles seized in the second search is described in Schedule 'C'. The balance article yet to be recovered from the respondent is described in Schedule 'D'. The articles mentioned in the 'B' Schedule was handed over to the petitioner. The articles mentioned in the 'C'

Schedule was also returned to the petitioner.

5(c) On a petition filed by the respondent before this Court, this Court directed the petitioner to deposit silver and gold articles before the CMM, Egmore, Chennai and directed the Magistrate to decide the issue and then pass order regarding handing over the articles. The petitioner has filed E.P. as stated above for issue of warrant to the respondent to return the articles as listed in the Schedule to the E.P. to the petitioner. The warrant of arrest was ordered and the respondent filed E.A.No.52 of 2013 for recalling the warrant of arrest, as per the direction of this Court. The respondent contended before the Executing Court that all the articles seized from him are in the custody of CMM, Egmore, Chennai and no other jewels are with him.

5(d) From the records, it is seen that contention of the respondent before the Executing Court is that all the jewels which are seized are in the custody of the CMM, Egmore, Chennai and petitioner, suppressing these facts, filed EP and the Court ordered arrest. The petitioner has taken all the jewels by filing CrI.MP No.741 of 2002 and taken all the jewels on 05.02.2002 and 17.03.2002.

5(e) The respondent contended that in view of the articles taken by the decree holder, the execution petition does not arise. On the other hand, the learned counsel for the petitioner contended that in I.A.No.1545 of 2001, the respondent was directed to return 1200 gms. of gold and 18 kgs. of silver articles. Challenging that order, the petition filed by the respondent was dismissed by the Hon'ble Apex Court and hence the said order has become final. On two occasions, only 102 gms. of gold and 6 kgs of silver articles and 123.760 gms. of gold and 6.511 kgs of silver were recovered from the respondent. The balance gold and silver articles are with the respondent and he is bound to return the said articles as per the order dated 12.02.2004 of the I Additional Family Court, Chennai which was confirmed by the Division Bench of this Court as well as the Hon'ble Apex Court. The learned Judge, erred in holding that the petitioner has not sought for arrest of the respondent.

5(f) On the other hand, as per Order XXI Rule 31 CPC, if the respondent fails to return the specific movable property and deliver the same to the petitioner, the respondent can be detained in Civil Prison and his property can be attached. On the other hand, E.A.No.52 of 2013 filed by the respondent under Order XXI Rule 26

(2) is not maintainable as there is no provision for recalling warrant issued for arrest of the respondent. He can either file appeal or approach the Appellate Court for stay of the order directing him to return the articles.

6. From the facts stated above and contention of the learned counsel for the petitioner as well as respondent, it is seen that 1200 gms. of gold and 18 kgs. of silver articles had been directed to be returned to the petitioner by the respondent. The said order has become final as the Division Bench of this Court as well as the Hon'ble Apex Court have confirmed the order of the First Additional Family Court, Chennai. Only a small portion out of 1200 gms. of gold and 18 kgs. of silver articles were recovered from the respondent. The Execution Petition is filed for recovery of the balance gold and silver articles from the respondent.

7. The respondent has contended that the petitioner has suppressed the materials facts. The said contention is without merits. The petitioner has given four schedules in the Execution Petition. In Schedule 'A', she has given entire list of gold and silver articles to be returned to her as per the order dated 12.02.2004 made in E.A.No.52 of 2013 by the I Additional Family Court,

Chennai. In Schedule 'B', she has given the list of gold and silver articles seized from the respondent and handed over to her. In Schedule 'C', she has given the list of gold and silver articles seized from the respondent and in the custody of CMM, Egmore, Chennai. In Schedule 'D', she has given the balance gold and silver articles to be returned to the petitioner.

8. It is not the case of the respondent that he has returned the entire gold and silver articles as claimed by the petitioner and as per order of the I Additional Family Court, Chennai which was confirmed upto Hon'ble Apex Court. The learned Judge, recalled the warrant of arrest issued to the respondent on the ground that the petitioner did not seek warrant of arrest. The said contention is not correct. The petitioner sought for issue of warrant directing the respondent to return the gold and silver articles as listed in the schedule to the EP. The petitioner quoted Order XXI Rule 32 for the relief. In fact, only Order XXI Rule 31 is the provision for decree for specific movable properties. Order XXI Rule 31 CPC reads as follows -

ORDER XXI Rule 31

*31. Decree for specific movable property- (1)
Where the decree is for any specific movable, or for
any share in a specific movable, it may be executed*

by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for [three months], if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [three months] from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

9. As per the above said provision, the judgment-debtor, respondent herein can be detained in Civil Prison and his property can be attached and sold to realise the value of the articles to be delivered to the decree holder. The learned Judge failed to consider this provision while allowing E.A.No.52 of 2013. In view of the same, the impugned order dated 15.12.2014 made in E.A.No.52 of 2013 in E.P.No.11 of 2009 is liable to be set aside and it is hereby set aside.

10. The learned counsel for the petitioner now submitted that the matter is pending before the V Additional Judge, Family Court, Chennai. Hence, the matter is remitted back to the V Additional Family Court, Chennai with a direction to issue fresh warrant of arrest to the respondent, if he fails to return the balance of gold and silver articles or value thereof to the petitioner before 18.06.2018 and pass order as per Order XXI Rule 31 CPC.

11. With the above direction, this Civil Revision Petition is allowed. No costs.

27.04.2018

Index: Yes
Speaking/Non-speaking order
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Note: Issue order copy by 28.04.2018

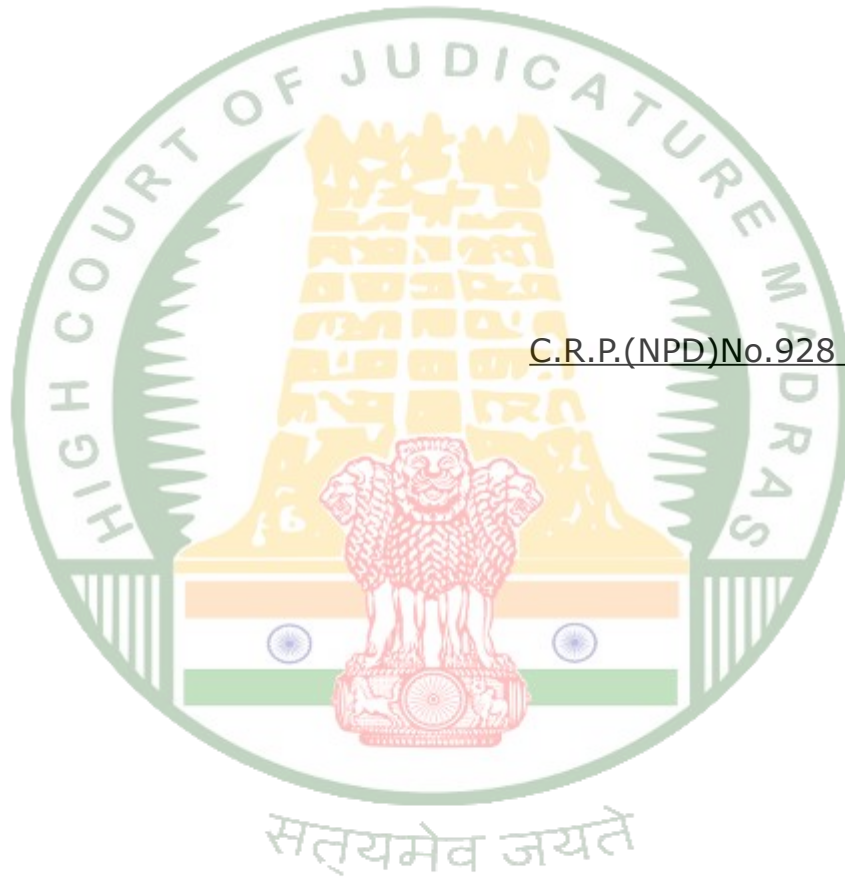
To

The V Additional Judge,
Family Court,
Chennai.

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V.M.VELUMANI, J.

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