

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.2493 to 2495 of 2012  
& M.P.Nos.1 to 1 of 2012

Thangavel

.. Petitioner in  
C.R.P.No.2493/2012

C.Mohan

.. Petitioner in  
C.R.P.No.2494/2012

Ko.Bakthan

.. Petitioner in  
C.R.P.No.2495/2012

Vs.

Indian Bank  
Aswarantha puram Branch  
Rep by its Manager,  
Aswaranthpuram Village,  
Pallipattu Taluk,  
Thiruvallur District.

.. Respondent in  
all C.R.Ps.

**COMMON PRAYER:** Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders dated 10.12.2011 made in E.P.Nos.10 to 12 of 2010 in O.S.Nos.184 to 186 of 1996 on the file of the District Munsif Court, Pallipattu, Thiruvallur District.

For Petitioners : Mr.S.P.Yuaraj & P.K.Shiva Kumar

For Respondent : M/s.Amutha Ganesh  
for M/s.Norton & Grant

**COMMON ORDER**

These Civil Revision Petitions are filed to set aside the fair and decretal orders dated 10.12.2011 made in E.P.Nos.10 to 12 of 2010 in O.S.Nos.184 to 186 of 1996 on the file of the District Munsif Court, Pallipattu, Thiruvallur District.

2.The issues and the respondent involved in all the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3.The petitioners are judgment debtors and respondent is the decree holder in O.S.Nos.184 to 186 of 1996 filed by the respondent for recovery of a sum of Rs.37,390/- on the file of the District Munsif Court, Pallipattu. The said suit was decreed by the judgment and decrees dated 09.11.2000, 09.11.2000 and 21.07.2000. The respondent filed E.P.Nos.10 to 12 of 2010 for arrest of the petitioners and detain them in the Civil Prison for non-payment of the decretal amount even though the petitioners have means to pay the decretal amount. They are having a sum of Rs.1,00,000/- cash in hand by way of doing agricultural business, they did not pay the said amount.

4.The petitioners filed counter affidavit in all E.Ps and denied the allegations of the respondent that they have means to pay the decretal amount. They contended that the Government has recommended to give the loan and Government has repaid the loan under waiver and therefore, the petitioners are not liable to pay any amount to the respondent.

5.Before the learned Judge, the petitioners were examined as P.W.1 and manager of the respondent bank was examined as R.W.1.

6.The learned Judge considering the evidence of both P.W.1 and R.W.1, allowed all E.Ps.

7.Against the said orders dated 10.12.2011 made in E.P.Nos.10 to 12 of 2010 in O.S.Nos.184 to 186 of 1996, the petitioners have come out with the present three Civil Revision Petitions.

8.According to the petitioners, the respondent has not produced any document to show that petitioners have means to pay

the decretal amount, except oral evidence of R.W1, the manger of the respondent bank. The learned Judge failed to see that respondent did not comply with the procedure contemplated for arrest of the petitioners. The respondent has not filed means affidavit along with E.P.

9.In support of his contentions, the learned counsel for the petitioners, relied on the judgment reported in **2006 (3) CTC 546 (Ganesh Vs. Sankaran and another):**

*"19.The Executing Court shall hold an enquiry and give a finding as to the correct means of the judgment-debtor to discharge the decree before ordering arrest under Rule 37 of the C.P.C. The Executing Court should follow the procedure laid down in Rule 39 and 40 of the C.P.C. In these petitions, the Executing Court did not observe the principles laid down by the High Court in M.Muthuswamy V. Supasri Chit Funds, Coimbatore and Tirunelveli, 1995 (2) CTC 20 and by the Supreme Court in Jolly George Varghese V. Bank of Cochin, AIR 1980 SCC 470. Hence, the order of the Executing Court is liable to be set aside."*

10.Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

11. From the materials available on record, it is seen that the respondent has filed E.Ps for arrest and detention of the petitioners in the Civil Prison as they have means to pay the decretal amount. Along with said E.Ps, the respondent has filed affidavits stating that the petitioners are having a sum of Rs.1,00,000/- in hand by doing agricultural business and having sufficient means to pay the decretal amount. The petitioners in the counter has not denied the said averments. In the circumstances, the judgment relied on by the learned counsel for the petitioners is not applicable to the facts of the present case. The petitioners' case is that the Government has recommended the loan and Government has repaid the said loan under waiver and therefore they are not liable to pay any amount. The petitioners have not produced any document to show that Government has waived the loan and Government paid the amount to the respondent bank.

12. In view of the failure on the petitioners to substantiate their case and failure to deny that they are having a sum of Rs.1,00,000/- in hand by doing agricultural activities, I find there is no illegality or irregularity warranting interference by this Court with

the order of the learned Judge dated 10.12.2011 made in E.P.Nos.10 to 12 of 2010 in O.S.Nos.184 to 186 of 1996.

13.In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.03.2018

Index :: Yes/No  
gsa

To

The District Munsif,  
Pallipattu, Thiruvallur District.



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**V.M.VELUMANI,J.**

gsa



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