



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD) No.388 of 2013

and

M.P. (MD) No.1 of 2013

N.Murugan :Petitioner / Petitioner/ Respondent / Defendant

vs.

Ponnammal :Respondent / Respondent / Petitioner / Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code Civil Procedure, against the order dated 21.09.2012, made in E.A.No.70 of 2012 in E.P.No.227 of 2006 in O.S.No.235 of 2005 on the file of the Principal Sub Court, Dindigul.

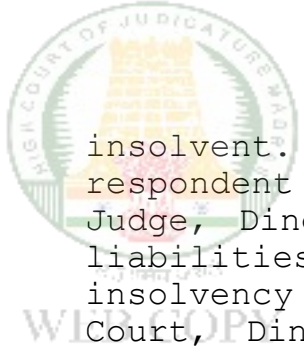
For Petitioner : Mr.S.C.Herold Singh
For Respondent : Mr.R.Nanda Kumar

ORDER

This Civil Revision Petition is filed by the petitioner, who is the judgment debtor in a suit in O.S.No.235 of 2005 as against the order dismissing his petition to recall the arrest warrant issued against him.

2.The brief facts, that are necessary for the disposal of this petition, are as follows:

2.1.The petitioner is the defendant in O.S.No.235 of 2005 on the file of the Subordinate Court, Dindigul. The suit is for recovery of a sum of Rs.3,80,850/- along with interest. It appears that the suit was decreed *ex-parte* on 30.01.2006. In execution of the decree, the respondent, the decree holder, filed an execution petition in E.P.No.227 of 2006. Since the petitioner has filed a petition to set aside the *ex-parte* decree, the petitioner filed a counter in the execution petition stating that the execution petition could not be heard till his petition to set aside the *ex-parte* decree is decided in one way or other. In the meanwhile, the petitioner has filed an insolvency petition in I.P.No.11 of 2010, before the Principal District Judge, Dindigul, to declare him as an



insolvent. In that petition, the respondent herein, is the sixth respondent and by order dated 06.09.2011, the Principal District Judge, Dindigul, adjudicated the petitioner as an insolvent. The liabilities of the petitioner is shown as 'A' schedule in the insolvency petition. The order passed by the Principal District Court, Dindigul in I.P.No.11 of 2010 is on merits. Though the creditors including the respondents herein were shown as respondents 1 to 6, they remained ex-parte. Hence, the order in insolvency proceedings has become final. Since the petitioner did not appear on 06.09.2010 before the executing Court, it appears that the executing Court issued arrest warrant.

3.After adjudication by the Insolvency Court, the respondent herein, filed an application in E.A.No.70 of 2012 to recall the warrant of arrest issued by the Execution Court. It is pointed out in the affidavit filed in support of the petition before the lower Court, that the petitioner suffered a loss in his business and that he could not repay the debt. He also contended that he was declared as an insolvent by the learned Principal District Munsif, Dindigul, by order dated 06.09.2011.

4.It appears that the petitioner paid a sum of Rs.50,000/- on 21.09.2012, at the time of his arrest and made an endorsement that he would pay the balance of decree amount. However, the petitioner did not pay any money. Thereafter the Court allowed the petition to recall warrant on payment of 25% of remaining balance amount on or before 18.10.2012. It is against this order, the present Civil Revision petition has been filed. The learned counsel for the petitioner states that the petitioner, who has been declared as an insolvent, cannot be arrested. The learned Counsel for the petitioner has relied upon Section 31 of the The Provincial Insolvency Act, 1920, wherein, an insolvent, in respect of whom, an order of adjudication is made, may apply to the Court for protection, and the Court may on such application make an order for the protection of the insolvent from arrest or detention.

5.Section 31(3) of the Act gives a protection to the insolvent from being arrested, only if a protection order is obtained. Section 29 of the Act gives an indication that any Court in which a suit or other proceedings is pending against the person, who has been declared as insolvent, can stay the proceedings or allow to continue on such terms, as the Court may impose.

6.Since Section 31 of the Act specifically enable the insolvent to get benefit only by a protection order, the petitioner cannot be prevented from arrest until he applies to the Court for protection under Section 31 of the Provincial Insolvency Act, 1920. In this case, it is not brought to the notice of this Court that the



petitioner has obtained an order in terms of Section 31(1) of the Insolvency Act.

7. Having regard to the facts and circumstances of the case, this Court is inclined to pass the following order:

(a) The order of learned Principal Subordinate Judge, Dindigul, in E.A.No.70 of 2012 in E.P.No.227 of 2006 in O.S.No.235 of 2005 on, dated 21.09.2012 is set aside.

(b) The revision petitioner is directed to apply before the Court concerned for an order of protection as contemplated under Section 31 of the Provincial Insolvency Act, 1920, within a period of three weeks from the date of receipt of a copy of this order.

(c) The proceedings in E.P.No.227 of 2006 in O.S.No.235 of 2005 on the file of the Principal Subordinate Court, Dindigul, shall be stayed till such time, the application to be filed by the revision petitioner for protection under Section 31 of the Provincial Insolvency Act, 1920, is disposed of on merits. In case, the petitioner does not file an application under Section 31 of the Provincial Insolvency Act, 1920, within the time, it is open to the learned Principal Subordinate Judge, Dindigul to consider the case in terms of Section 29 of the Provincial Insolvency Act, 1920, and pass appropriate orders on merits.

8. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (J)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The Principal Sub Court, Dindigul.

2. The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

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GSP/CMR

TR/RP/SAR-IV(16.10.2018) 3P 4C