



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P(MD)No.508 of 2018 (PD)

and
CMP(MD) No.2201 of 2018

S.Subramoniam ...Petitioner/ Petitioner/ Respondent/ Defendant
Vs.
K.Mohanan ...Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order and decreetal order dated 06.01.2018 made in E.A.No.217 of 2017 in E.P.No.31 of 2016 in O.S.No.149 of 2013 on the file of the I Additional Subordinate Court, Nagercoil.

For Petitioner : Mr.N.S.Ramakrishnadass

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order dated 06.01.2018 passed in E.A.No.217 of 2017 in E.P.No.31 of 2016 in O.S.No.149 of 2013 on the file of the I Additional Subordinate Court, Nagercoil.

2. The petitioner is the defendant in the suit in O.S.No.149 of 2013 and respondent in E.P.No.31 of 2016 and the said suit has been filed for recovery of money and the same was allowed on 24.01.2014. Thereafter, Execution petition in E.P.No.31 of 2016 has been filed by the respondent for an order of arrest. The petitioner paid the amount regularly on various installments. Due to his ill-health, the petitioner was not able to attend the Court on 14.10.2017 and also not able to pay the installment amount of Rs.5,000/-. Now he is ready to pay the same. But the execution Court without giving opportunity to the petitioner, has straightaway passed an order of arrest. Aggrieved over the same, the petitioner/defendant preferred an E.A.No.217 of 2017 for cancellation of arrest warrant and the execution Court declined to cancel the arrest warrant, thereby dismissed the petition, aggrieved by which, this civil revision petition has been filed by the petitioner.

3. The respondent/ plaintiff, before the lower Court, through his counter affidavit denied all the averments made in the affidavit. The petitioner has to pay the balance amount of Rs.1,00,000/- to the respondent. The petitioner is working in a Government Department and getting more than Rs.40,000/- as monthly salary. The petitioner is very irregular in payment and hence, there is no valid ground to set aside the order of arrest and hence, prayed for dismissal.



4. Heard the learned Counsel for the petitioner and perused the materials available on record. Notice to the respondent is dispensed with.

5. It is seen from the records that the petitioner is working in Nagercoil Municipality. The suit in O.S.No.149 of 2013 has been filed by the respondent for recovery of money and the petitioner has been regularly paying the decree amount from his salary through installments. Since the petitioner is not regular in paying the amount, the executing Court has directed the petitioner to pay a sum of Rs.50,000/- on or before 22.02.2018 to show his bonafide from the amount of Rs.1,00,000/- which was due by him.

6. It is seen from the records that the petitioner is due of Rs.1,00,000/- in which, the execution Court has directed to deposit a sum of Rs.50,000/- on or before 22.02.2018 and if the petitioner fails to pay the amount, the petition stands dismissed automatically without any further reference to this Court.

7. The only grievance expressed by the petitioner is that he is ready to pay the amount in installments. It is not possible for him to pay the entire Rs.50,000/- on or before 22.02.2018 as he is an employee working in Municipality Corporation. Considering the claim of the petitioner, this Court is inclined to allow the application on condition.

8. In the result, this Civil Revision Petition is allowed and the order dated 06.01.2018 made in E.A.No.217 of 2017 in E.P.No.31 of 2016 in O.S.No.149 of 2013 is set aside. The petitioner is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) on or before 19.03.2018 and the balance amount of Rs.25,000/- (Rupees Twenty Five Thousand only) shall be paid by 19th of April 2018 and the balance amount of Rs.50,000/- (Rupees Fifty Thousand only) shall be paid in five equal installments i.e. the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) on every 19th of English Calender month and if the petitioner fails to pay any of the installments, the execution Court shall proceed further, as if there is no order passed by this Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

The I Additional Subordinate Judge, Nagercoil.

+1cc to Mr.N.RAMAKRISHNADASS Advocate, SR.No.54378

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