



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P(MD)No.713 of 2018 (NPD)

and

CMP(MD) No.3142 of 2018

Veluchamy ...Petitioner/Respondent/ Defendant

Vs.

Varatharaj ...Respondent/ Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 12.02.2018 made in E.P.No.3 of 2012 in O.S.No.151 of 2006 on the file of the learned Subordinate Judge, Palani, Dindigul District and allow the Civil Revision Petition.

For Petitioner : Mr.J.M.Hassanul Bazari

For Respondent : Mr.S.Karthick

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order dated 12.02.2018 passed in E.P.No.3 of 2012 in O.S.No.151 of 2006 on the file of the learned Subordinate Judge, Palani, Dindigul District.

2. The petitioner is the defendant in the suit in O.S.No.151 of 2006 and respondent in E.P.No.3 of 2012 and the said suit has been filed by the respondent herein, for recovery of money, wherein an *ex-parte* decree was passed on 30.01.2008. Thereafter, Execution petition in E.P.No.3 of 2012 has been filed by the respondent herein for an order of arrest. In the meanwhile, the petitioner herein has filed a petition to condone the delay of 1837 days in filing a petition to set aside the *ex-parte* decree passed against him. In the mean time, the petitioner/defendant preferred a stay application in E.A.No.75 of 2014 and the execution Court declined to stay the proceedings, thereby dismissed the petition on 19.07.2017. Aggrieved thereby, the petitioner has filed a Civil Revision Petition in CRP(MD) No.390 of 2017 and the same is pending for disposal. It is the grievance of the petitioner that the Execution Court, without considering the pendency of the Civil Revision Petition and without giving him



an opportunity, has straightaway passed an order of arrest in the execution petition in E.P.No.3 of 2012. Aggrieved over the same, this civil revision petition has been filed by the petitioner.

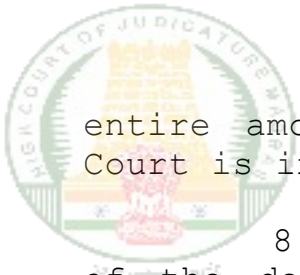
3. The learned Counsel for the respondent/plaintiff has submitted that the suit is of the year 2006 and the respondent has obtained decree in the year 2008. Though the petitioner is having sufficient means to repay the decreetal amount, he has not paid the decreetal amount. In order to drag on the proceedings, the petitioner has filed this Civil Revision Petition. The petitioner has filed a petition to condone the delay of 1837 days in filing the petition to set aside the ex-parte decree and the same was dismissed on 14.07.2016, against which, the petitioner preferred a Civil Revision Petition in CRP(MD) No.SR.2149 of 2018 and the same was not even numbered yet, since it was filed with delay. The petitioner is not interested in repaying the amount and hence, there is no valid ground to set aside the order of arrest and hence, prayed for dismissal.

4. Heard the learned Counsel on either side and perused the materials available on record.

5. It is seen from the records that the suit in O.S.No.151 of 2006 has been filed by the respondent for recovery of money and ex-parte decree was passed on 30.01.2008. The respondent/ plaintiff as P.W.1 has deposed that the petitioner/defendant owns immovable property at Chattrapatti Village valuing to the tune of Rs.15,00,000/-. Even then the petitioner failed to repay the decreetal amount. In support of his contention, the copy of partition deed is marked as Ex.P.1. It is seen that the petitioner, though is owning immovable property and also having sufficient means to repay the decreetal amount, has not paid the decreetal amount. Even after lapse of 10 years, the petitioner has filed a petition to condone the delay of 1847 days in filing the petition to set aside the ex-parte order, which was dismissed by the Court below, against which the petitioner preferred a Civil Revision Petition with condone delay petition and the same is pending in S.R. stage itself, which shows the attitude of the petitioner and the manner in which the matter has been prolonged. In my considered opinion, the petitioner is wilfully delaying the matter in all aspects and therefore, the learned Judge has passed the order of the arrest. Considering the facts and circumstances of the case, this Court is of the view that the petitioner cannot be shown any indulgence.

6. It is seen from the records that the petitioner is in due for a sum of Rs.2,62,333/- i.e., decreetal amount.

<https://hcservices.ecourts.gov.in/hcservices/> The only grievance expressed by the petitioner is that if some breathing time is given, he is ready to pay the amount in installments as it is not possible for him to pay the



entire amount. Considering the claim of the petitioner, this Court is inclined to allow the application on condition.

8. Accordingly, the petitioner is directed to deposit 50% of the decretal amount to the credit of E.P.No.3 of 2012 in O.S.No.151 of 2006 on the file of the learned Subordinate Judge, Palani, within a period of two weeks from the date of receipt of a copy of this order and the balance amount (which includes interest) shall be paid in 5 equal monthly installments and the first installment shall be paid by 10th of May 2018 and the balance four installments shall be paid on or before 10th of every English Calendar month. Till such time, there shall be an order of interim stay insofar as the Execution proceedings are concerned. If the petitioner fails to pay any of the installments, the learned Subordinate Judge, Palani, Dindigul District, shall proceed further, as if there is no order passed by this Court.

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

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Palani, Dindigul District.

+1cc to Mr.S.Karthick, Advocate Sr.No.59143

+1cc to Mr.J.M.Hassanul Bazari, Advocate Sr.No.59398

RM

VB/SV/MMS/SAR3/16.04.2018/3P/4C

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28.03.2018