



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)No.1086 of 2018 (NPD)

and

CMP(MD).4723 of 2018

Velusamy

... Revision Petitioner

Vs.

The Branch Manager,
Indian Overseas Bank,
Cheranmahadevi,
Ambasamudram (TK),
Tirunelveli (Dt).

... Respondent

Prayer : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 31.01.2018 passed in E.P No.32 of 2016 in O.S No.61 of 2013 on the file of the Subordinate Judge, Ambasamudram.

For Petitioners : Mr.A.Sankara Ramasubramanian

For Respondents : Mr.Pala Ramasamy

ORDER

The respondent is the decree holder. The bank filed EP No.32 of 2016 for enforcing the money decree. After holding the mandatory means enquiry, the court below ordered civil arrest of the revision petitioner. Questioning the same, the judgment debtor filed this civil revision petition.

2.The learned counsel appearing for the revision petitioner placing reliance on the decision reported in 2017-2-L.W.298 (T.Dharmalingam vs. K.P.Bharathi) contended that the decree holder must file an application for attachment of judgement debtor's property. Without exhausting the said option, an application for arrest is not maintainable.

3.I am unable to agree with the said submission of the learned counsel for the revision petitioner. Section 52 of CPC enables the decree holder to enforce the decree (a) by delivery of any property specifically decreed (b) by attachment and sale or by the sale without attachment of any property; (c) by arrest and detention in prison. The provision does not say that without exhausting the order options Section 51(c) cannot be invoked.



When the principal Section does not prescribe any such mode, it is not open to this Court to insist that the decree holder must file an application for attachment of property and only thereafter apply for arrest.

4. In this view of the matter, the order impugned in this civil revision petition is sustained. This civil revision petition stands dismissed. However, the execution proceedings shall be put on hold and kept in abeyance for a period of three months from today. If the revision petitioner satisfies the decree in the meanwhile, the order impugned in this civil revision petition will stand set aside automatically. The revision petitioner is given breathing time of three months from today to liquidate his decretal liability. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The Subordinate Judge, Ambasamudram.

+1 CC To MR.A.SANKARARAMA SUBRAMANIAN, Advocate SR. NO.87780
+1 CC To MR.PALA RAMASAMY, Advocate SR. NO. 88135

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