



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.210 of 2016

and

C.M.P. (MD) No.898 of 2016

M.Kannan

... Petitioner

vs.

S.Nandagopal

... Respondent

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order passed in E.A.No.172 of 2015 in E.P.No.54 of 2014 in O.S.No.169 of 2012 on the file of the Principal Sub-Court, Thanjavur, dated 08.10.2015.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.S.Rajaprabhu

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#### ORDER

This Civil Revision Petition is directed against the order passed by the learned Subordinate Judge, Thanjavur, in E.A.No.172 of 2015 in E.P.No.54 of 2014 in O.S.No.169 of 2012, dated 08.10.2015.

2. The facts of the case are that the respondent herein, as plaintiff, has filed the suit in O.S.No.169 of 2012 for recovery of money based on pro-note, which was decreed as prayed for. Thereafter, execution petition in E.P.No.54 of 2014 came to be filed, wherein, an order of arrest was passed as against the petitioner herein. Challenging the same, the petitioner herein has filed E.A.No.172 of 2015 to raise the order of arrest and also to permit the petitioner to pay the balance decree amount in monthly installments. The said E.A., after contest, was dismissed by the Execution Court, against which, the present civil revision petition was filed.

3. Heard the learned Counsel on both sides and perused the documents placed on record.

4. According to the learned Counsel for the petitioner, the petitioner has paid part payment towards the decreetal amount, i.e., the petitioner has already paid a sum of Rs.1,45,000/- and for remitting the balance amount, he seeks indulgence of this Court to permit him to remit the same in installments.



5. When the matter came up for hearing today, the learned Counsel for the respondent would submit that the petitioner has made part payment and the petitioner is in due for a sum of Rs.1,05,000/- and he would further submit that the respondent is ready to receive the balance amount in installments. The quantum of the said balance amount, i.e., Rs.1,05,000/-, is, however, disputed by the learned Counsel for the petitioner.

6. In such a view of the matter, this Court feels that ends of justice would be met if the petitioner is permitted to pay the balance decretal amount in equal installments. Since the quantum of the balance decretal amount to be paid by the petitioner, is in dispute, this Court is of the view that the same may be decided by the learned trial Judge.

7. Considering the facts and circumstances of the case and also in the interest of justice, the following directions are issued:-

- the impugned order dated 08.10.2015, is set aside and the petition in E.A.No.172 of 2015 is allowed;
- the learned trial Judge is directed to decide the balance decretal amount to be paid by the petitioner within a period of two weeks from the date of receipt of a copy of this order, in the manner known to law;
- thereafter, the petitioner is directed to remit the same in five equal monthly installments, i.e., on or before 5<sup>th</sup> of every English Calendar month and the said exercise shall start from the month of May, 2018, which means, the petitioner has to completely settle the amount due on or before September, 2018; and
- if the petitioner fails to comply with the directions of this Court, the learned trial Judge shall proceed with the matter as if no order has been passed by this Court.

8. With the above directions, the civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge, Thanjavur.

+1CC to Mr.M.P.Senthil, Advocate, SR.No. 59149

+1CC to Mr.S.Rajaprabu, Advocate, SR.No. 59405

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