

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.NPD.No.151 of 2012
and
MP.No.1 of 2012

A.C.Palanisamy ... Petitioner

vs.

S.Krishnasamy ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal orders dated 15.11.2011 in EP.No.36 of 2010 in OS.No.456 of 2002 on the file of the Subordinate Judge, Perundurai, Erode.

For Petitioner : Mr.R.Bharanidharan

For Respondent : Mr.N.Manoharan

ORDER

The revision petitioner is the judgment debtor in OS.No.456 of 2002 on the file of the Subordinate Judge, Perundurai. The decree holder, in order to execute the decree passed in OS.No.456 of 2002, filed EP.No.36

of 2010 under Order XXI Rule 11(2) seeking for the arrest of the Judgment debtor for non payment of decree amount. The Judgment debtor filed his counter stating that he does not have sufficient means to pay the decree amount. Subsequently, the Executing Court allowed EP.No.36 of 2010 and directed the arrest of the Judgment debtor by 14.12.2011. Aggrieved over the fair and decreetal orders dated 15.11.2011 passed by the learned Subordinate Judge, Perundurai, the Judgment debtor has filed the present Civil Revision Petition.

2. A perusal of the orders passed by the Executing Court shows that the decree holder did not adduce any evidence to show that the Judgment debtor was possessed of sufficient means to pay the decree amount. The Executing Court had also observed that since the Judgment debtor did not examine himself to prove that he does not have sufficient means to pay the decree amount, he is liable to be arrested for non payment of the amount due to the decree holder.

3. Mr.R.Bharanidharan, learned counsel appearing for the civil revision petitioner relied on the decision of a Division Bench of this court in **P.Azeez Ahmed vs. State Bank of India** reported in **1995 1 MLJ 446** and

contended that only based on the documents and oral evidence adduced on the side of the decree holder, the Executing court can come to a conclusion whether the Judgment debtor has got means to pay the decree amount or not and since this was not done in the present case, the order of arrest passed by the trial court is liable to be set aside.

4. *Per contra*, Mr.N.Manoharan, learned counsel appearing for the respondent / decree holder, relied on the decision in **Ravinder Kaur vs Ashok Kumar** and another reported in (2003) 8 Supreme Court Cases 289 and contended that Courts should be vigilant to see through the diabolical plans of the Judgment debtors to deny the decree holders the fruit of the decree obtained.

5. At the outset, it may be observed that the decree holder though in his evidence had contended that the Judgment debtor was possessed of means to pay the decree amount, did not examine himself as a witness and did not also adduce any evidence in this regard. Despite that, the Executing Court had ordered the arrest of the respondent merely on the basis that the respondent did not enter into witness box to prove that he

was not possessed of sufficient means. The approach of the Executing Court by placing entire burden on the Judgment debtor is totally erroneous and therefore warrants interference by this court.

6. In the decision in **P.Azeez Ahmed vs. State Bank of India** reported in **1995 1 MLJ 446**, it has been held thus:

"...It is too obvious to need elaboration that to cast person in prison because of his poverty and consequently inability to meet his contractual liability is appalling. To be poor, in this land of daridra Narayana, is no criminal to 'receiver' debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the covenant. But this is precisely the interpretation we have put on the Proviso to Section 51, C.P.C. and the lethal blow of Article 21 cannot strike down the provision, as now interpreted.

The words which hurt are or has had since the date of the decree, the means to pay the amount of the decree. This implies, superficially read, that if at any time after the passing an old decree the Judgment debtor had come by some resources and had not discharged the decree, he could be detained in prison eventhough at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Article 11 (of the covenant) and Article 21 (of the Constitution). The simple default discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or reculant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal of demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will pray prominently. We would have, by this construction, sauced law with justice, harmonised Section 51 with the covenant and the constitution."

7. In the instant case, the decree holder though had contended

that the Judgment debtor is a Railway contractor and is owning two acres of land worth of Rs.75,00,000/- (Rupees Seventy Five lakhs only) did not adduce any evidence to prove the same. Therefore, in the facts and circumstances of the present case, the orders passed by the Executing Court is liable to be set aside.

8. In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No

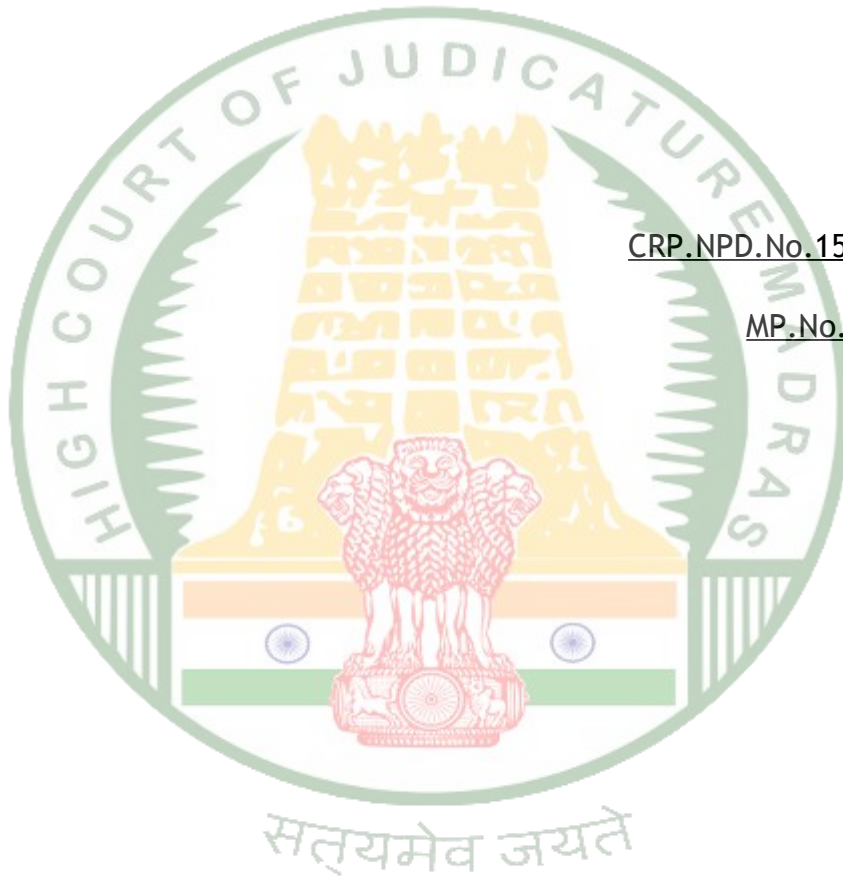
To

The Subordinate Court,
Perundurai,
Erode.

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R.HEMALATHA, J.

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