IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

CRP (NPD) No.674 OF 2012 AND
M.P.No.1 of 2012

R.Lakshmanan ... Petitioner

Vs.

1. M/s Sri Hari Enterprises,
   represented by proprietorix K.Savithiri

2. M/s Meenakshi & Co.
   represented by Proprietor K.S.Krishnan

3. M/s Karthikeyan & Co.
   represented by proprietor Karthikeyan

   all are residing at D.No.1004,
   Mettupalayam Road, Coimbatore. ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 10.11.2011 passed in E.P.No.398 of 2007 in O.S.No.1224 of 1998 by the II Additional Subordinate Judge, Coimbatore.

For Petitioner : Ms.S.Suseeladevi

For Respondents : No appearance.

ORDER

The civil revision petitioner is the judgment debtor in E.P.No.398 of 2007 in O.S.No.1224 of 1998 on the file of the II Additional Subordinate Judge, Coimbatore.

2. The respondents/ decree holders filed E.P.No.398 of 2007 before the II Additional Subordinate Judge, Coimbatore under Order XXI Rule 11(2) of the Code of Civil Procedure for arrest and detention of the revision petitioner/judgment debtor in a civil prison. The respondents/ decree holders have obtained a decree for recovery of money from the revision petitioner. In order to execute the decree, they have filed the above execution petition. According to the respondents/ decree holders, the judgment debtor willfully and wantonly evading the payment due to them, even though he has got a bank balance of Rs.5,00,000/- and is earning a sum of Rs.20,000/- per month through a business run by him in the name and style of Amman Trading Company.

3. The Subordinate Judge, Coimbatore vide his fair and decreetal order dated 10.11.2011, allowed the execution petition and directed the judgment debtor to be arrested by 09.01.2011 and posted the execution petition for payment of batta. Aggrieved over the orders passed by the executing court, the judgment debtor has filed the present revision petition.

4. Ms.S.Suseeladevi, learned counsel appearing for the revision petitioner/judgment debtor raised the following points.

(i) The decree holders have not established the fact that the judgment debtor is running a business in the name and style of Amman Traders and is earning a sum of Rs.20,000/- per month.

(ii) Though the judgment debtor filed a certificate issued by a branch Manager, Bank of Baroda, Sai baba colony branch, the said certificate was not considered by the executing court and instead the executing court held that the Branch Manager, Bank of Baroda is not an authorised person to certify in whose name, a business establishment is registered.

(iii) In a petition filed Order 21 Rue 37 of the Code of Civil Procedure, the burden of proof is on the decree holder to prove that the judgment debtor has sufficient means to pay the decree amount.

(iv) Since in the instant case the decree holders have not proved the means of the judgment debtor, the execution petition is liable to be dismissed.

5. He also relied upon the following decisions.

(i) K.Karunakar Shetty Vs. Syndicate Bank, Manipal reported in AIR 1990 Karnataka 1

(ii) T.S.Ranganathan V. P.R.Mohan Ram reported in Current Civil Cases 1993(1) 133

(iii) V.Ganesa Nadar Vs. K.Chellathai Ammal reported in AIR 1989 Madras 8

(iv) A.S.Venkatesan Vs. Velayutham reported in 2010(2) MLJ 772

and contended that the decree holder must prove sufficient means of the judgment debtor and also the malafide intention of not paying the decree amount and that merely because the judgment debtor possessed of immovable property, the order of detention in civil prison cannot be made for his failure to pay. Hence, he prayed for setting aside the orders passed by the executing court.

6. No appearance on the side of the respondent.

7. The respondents/ decree holders filed the execution petition for recovery of decreetal amount by way of arrest and putting the revision petitioner/judgment debtor in the civil prison. According to the respondents/decree holders, the revision petitioner is willfully and deliberately evading payments, even though he is possessed of sufficient means to satisfy the decree. The main contention of the decree holder is that the judgment debtor is having a bank balance of Rs.5,00,000/- and is running a business under the name and style of Amman Traders and earning a sum of Rs.20,000/- per month. In order to prove the means of the judgment debtor, one of the decree holders examined himself as PW1.

8 . The contention of the revision petitioner/judgment debtor is that Amman Traders Company is being run by his wife, as evidenced by the certificate issued by the Branch Manager, Bank of Baroda, Sai Baba Colony branch and not by him. It is pertinent to point out that the

certificate issued by a living persons is not admissible in evidence, unless the person, who issued the certificate comes and deposes before the court. In the instant case, the Branch Manager of the Bank of Barado was not examined by the respondent. Further more, as rightly observed by the executing court, the branch manager is not an authorised person to certify as to whose name, the business establishment is registered. When the revision petitioner/judgment debtor contends that Amman Traders Company is being run by his wife and not by him, he has to prove the same. It is also relevant to extract Section 106 of Indian Evidence Act, which reads thus.

> ***106. Burden of proving fact especially within knowledge.***—*When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him .*

9. In the instant case, the specific contention of the judgment debtor is that, Amman Traders Company is being run by his wife. The principles underlined in Section 106 of the Indian Evidence Act is that the burden of establishing the facts which are within the personal knowledge of a particular person is cast on the person concerned and if he fails to establish or explain those facts, an adverse inference should be drawn

against him. The judgment debtor could have filed the registration certificate of the business namely Amman Traders Company to show that his wife is running the business.

10. A perusal of the orders passed by the executing court further shows that the respondent had admitted during the course of cross examination that he started a business in the name and style of "Devi Traders Hardwares and painting" at Pankaja Mill Road, Ramanathapuram Coimbatore. Though the civil revision petitioner is possessed sufficient means, is deliberately evading payments. In the execution petition itself, an attempt is made by the judgment debtor to show that he is not possessed sufficient means. On the contrary, he has deposed that he is running a business in the name and style of Devi Traders Hardwares and Painting. The II Additional Subordinate Judge, Coimbatore has given cogent reasons for allowing the execution petition and I do not see any reason to interfere with the findings recorded by the executing court.

11. In the result,

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The orders dated 10.11.2011 passed in E.P.No.398 of 2007 in O.S.No.1224 of 1998 by the II Additional Subordinate Judge, Coimbatore is set aside.

06.08.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

The II Additional Subordinate Judge, Coimbatore.

R.HEMALATHA,J.
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