

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.3357 of 2014 and
M.P.No.1 of 2014

1.P.Arivumani
2.P.Arivazhagan
3.K.Pazhanisamy
4.K.Palaniappan

..Petitioners

Vs.

M/s.Kotak Mahindra Bank Ltd.,
Rep. by its Authorised Signatory Mr.Kannan,
2nd Floor, 3 Doss India Tower,
2nd Line Beach, Parrys,
Chennai – 600 001

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 26.03.2014 in R.E.P.No.328 of 2011 in A.R.O.P.No.110 of 2010 on the file of the learned I Additional District Judge, Salem.

For Petitioners : Mr.M.Elango

For Respondent : Mr.P.Elaya Rajkumar
for M/s.Ramalingam & Associates

ORDER:

The petitioners are judgment debtors in REP No.328 of 2011 on the file of the learned I Additional District Judge, Salem.

2. Based on the award dated 17.09.2010 the respondent in this Civil Revision Petition filed an execution petition in REP No.328 of 2011 on the file of the learned I Additional District Judge, Salem. In the said REP, the respondent herein prayed for issue of arrest warrant against the petitioners herein under Order 21 Rule 38 of CPC for committing the petitioner to civil prison.

3. The learned I Additional District Judge, Salem immediately ordered to issue notice to the petitioners herein. After receiving notice sent by the learned I Additional District Judge, Salem all the respondents herein appeared before the Execution Court and filed their counter. After receiving the counter, on considering the submissions made by the either side, the learned I Additional District Judge passed an order to arrest the petitioners on 26.03.2014.

4. Aggrieved over the said order dated 26.03.2014 the

petitioners have approached this Court by way of filing this Civil Revision Petition.

5.Today, when this Civil Revision Petition is came up for hearing both the counsel appearing for the petitioners and the respondent are present.

6.The learned counsel appearing for the petitioners / judgment debtors would contend that the executing court without following the provisions prescribed under Order 21 Rule 37 passed an order of arrest against the petitioners which is violative of above referred procedure.

7. On the other hand, the learned counsel appearing for the respondent / decree holder would contend that the learned I Additional District Judge only after hearing the objections made by the respondents, passed the impugned order. Further he would contend that issuing notice under Order 21 Rule 37 is not mandatory and thereby the order passed by the court below is well within the legal frame work.

8.The submissions made by the learned counsel appearing on either side is considered.

9.In applying the order 21 Rule 37 it is held in a number cases that before the Court issues a notice or warrant of arrest under this rule it must satisfy itself, whether judgment debtor is liable to be arrested having regard to the provisions in Section 51 of the Code.

10. On close reading of the said section, it seems that in a case of execution of decree for payment of money where orders were passed on the application on decree holder for arrest and detention of the judgment debtor to the civil prison, the said order was liable to be set aside as no show cause notice was issued to the judgment debtor or any enquiry as contemplated under Rule 40 of the Order 21 was conducted. In the case in our hand it is not in dispute that before passing the impugned order, notice was issued to the judgment debtor and only after receiving the objection from them, the learned I Additional District Judge, Salem has passed the order. Furthermore, before passing the said order PW1, the authorised signatory of the decree holder Kannan has been examined as PW1. He has deposed that the respondents / judgment debtors are doing real estate

business, having tipper lorry, and running quarry business, further he stated in the above business they are earning more than ten lakh rupees per month. The said evidence given by PW1 was not to be put into cross examination by the petitioners / judgment debtors. Therefore it is clear only after giving opportunity to the petitioners, the said order was passed. So on culling out the entire procedure adopted by the learned I Additional District Judge, Salem establishes the fact that the order of arrest not to be issued at the first instance. Therefore, the arguments advanced by the learned counsel appearing for the petitioners that the Order 21 rule 37 of CPC has not been followed is basically found incorrect.

11.Hence, in view of the above, I am of the opinion there is no material irregularity found in the order passed by the learned I Additional District Judge, Salem. Therefore, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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23.09.2019

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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R.PONGIAPPAN,J.

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To
The learned I Additional District Judge,
Salem



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