

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4736 of 2014
& M.P.No.1 of 2014

Chidambara Konar Petitioner

Vs

Thayumanava Devar Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 27.03.2014 passed in Unnumbered E.A. in E.P.No.5 of 2014 in O.S.No.145 of 2005 on the file of the learned District Munsif-cum-Judicial Magistrate, Vedaranyam.

For Petitioner : Mr.E.Karthik Raja
for Mr.G.Karthikeyan
For Respondent : Mr.R.Murugabharathi

ORDER

Aggrieved over the order dated 23.07.2014, made in Unnumbered E.A. in E.P.No.5 of 2014 on the file of the learned District Munsif cum Judicial Magistrate, Vedaranyam, the petitioner, who is the judgment debtor in the above said execution proceedings, preferred this Civil Revision Petition to set aside the rejection order passed by the Court below.

2. Initially the respondent in this revision petition has filed a suit in O.S.No.145 of 2005 on the file of the District Munsif Court, Nagapattinam, as against the petitioner herein and sought for the relief of direction, directing the petitioner/defendant to pay the suit amount along with costs. On 29.06.2006, the learned District Munsif, Nagapattinam, allowed the suit and passed a judgment and decree in favour of the respondent. Based on the said decree on 17.11.2007, the respondent filed an execution petition in E.P.No.31 of 2008 and the same was subsequently closed. Again on 09.04.2013, the respondent filed second execution petition in E.P.No.11 of 2013, by order dated 20.11.2013, the said execution petition was dismissed for non prosecution.

3. Only thereafter on 26.02.2014, the respondent has filed the third execution petition in E.P.No.5 of 2014, which is the subject matter of this Civil Revision Petition. Now on going through the impugned order passed by the trial Court, it appears that the petitioner was not turned up after receiving the notice from the trial Court. Hence on 27.06.2014, the learned trial Judge passed an order of arrest against the petitioner. Only in the said circumstances, the petitioner herein filed an application to set aside the order dated 27.06.2014 and the same

was rejected on 23.07.2014 as not maintainable. Challenging the said rejection order, the petitioner is before this Court.

4. In fact the order challenged now is a docket order, which reads as follows:-

"On perusal of available records petitioner is set exparte on 21.03.2014. Hence, petition is rejected as not maintainable. sd/- 23.07.2014"

In fact, the said order passed by the execution Court is not in accordance with the provisions of C.P.C. In fact, in view of the amendments made in Order XXI Rule 37 of the Code by Act XXI of 1936, the Court shall issue a notice to the judgment debtor before issuing a warrant of his arrest in execution of decree, unless the Court is satisfied by an affidavit or otherwise, that the judgment debtor is likely to abscond or leave the limits of the jurisdiction of the Court with the object of delaying the execution of the decree. In this case, even though there is a provision available for recalling the order of arrest, before passing the order, it is necessary to see the back ground of the case pertains to the execution petition.

5. Actually the decree holder filed a suit for recovery of money in the year 2005. Thereafter, after obtaining the decree in his favour, he filed three execution petitions for realizing a sum of Rs.29,737/-. It is also came to the knowledge of this Court through the learned counsel appearing on behalf of the respondent/plaintiff that after filing this Civil Revision Petition, no payment has been made. Therefore considering the quantum of the decree amount, I am of the opinion that, if the order passed by the learned Executive Court is set aside, the decree holder losses faith in the judicial system. So as a special case, for the reasons stated above, this Court is not inclined to allow this Civil Revision Petition.

6. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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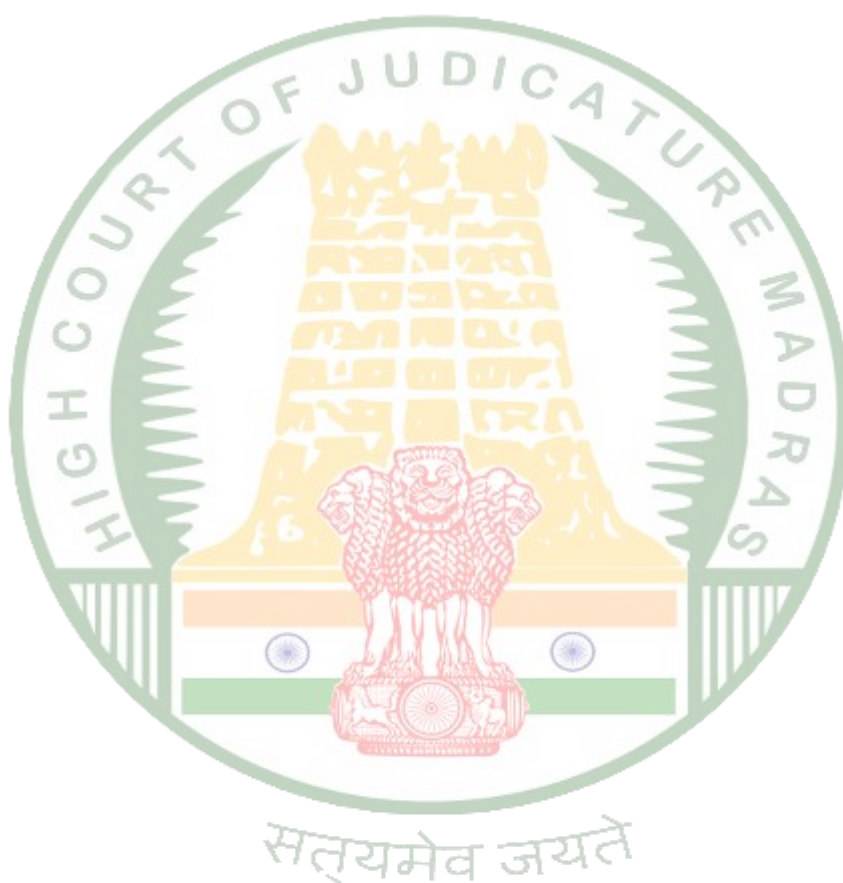
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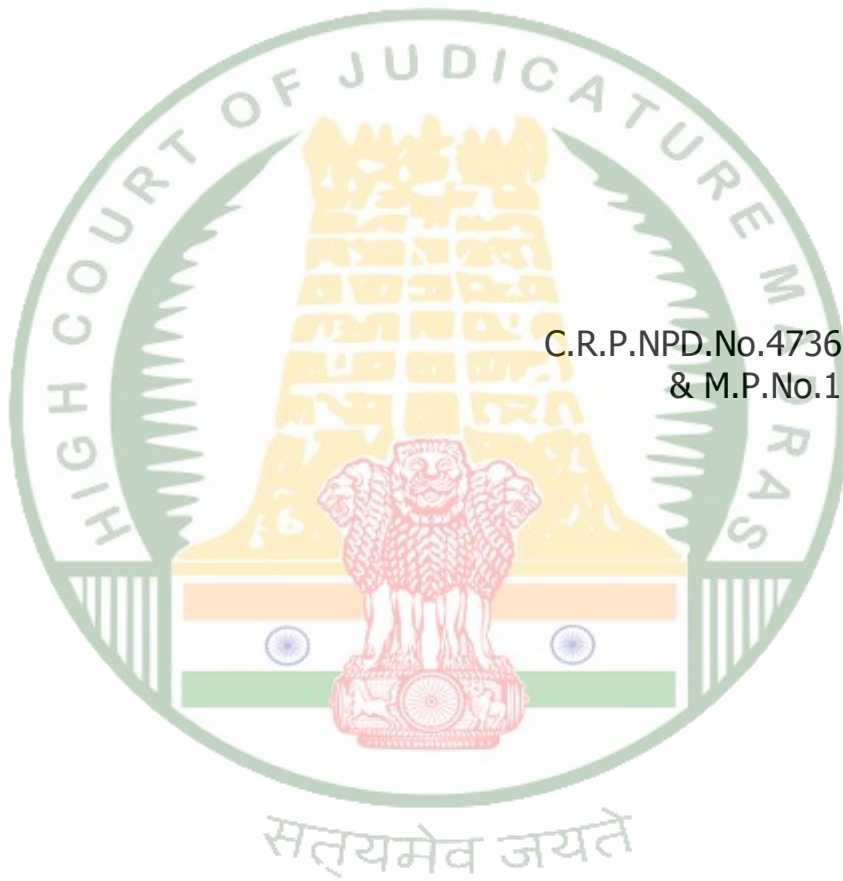
The District Munisf-cum-Judicial Magistrate Court,
Vedaranyam.



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R.PONGIAPPAN, J.

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