



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **02.12.2019**

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.1673 of 2013 (NPD)

R.Paulraj

.. Petitioner/Petitioner/Plaintiff

vs.

Sunil Prakash

.. Respondent/Respondent/Defendant

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order passed in E.P.No.29 of 2012 in O.S.No.94 of 2009 dated 04.10.2012, on the file of the Sub Judge, Padmanabhapuram and allow the Civil Revision Petition.

For Petitioner : Mr.K.Sree Kumaran Nair

For Respondent : No appearance

ORDER

Heard Mr.K.Sree Kumaran Nair, learned counsel appearing for the petitioner. The respondent though served, did not appear in person or through counsel.

2. This Civil Revision Petition has been filed by the decree holder against the order, dated 04.10.2012 made in E.P.No.29 of 2012.

3. The decree holder having obtained a money decree against the judgment debtor in O.S.No.94 of 2009 sought for the execution by arrest in detention of the judgment debtor in civil prison under Order 21 Rule 37 of the Civil Procedure Code. It appears from the proceedings that the Executing Court ordered notice to the respondent and the respondent/judgment debtor though served, did not appear either in person or through counsel. The proof affidavit was filed by the decree holder stating that the respondent has got means to pay the decree amount and is evading payment. The Executing Court however without adopting the procedure under Order 37(2), proceeded to examine the means evidence and concluded that the decree holder has not established that the respondent/judgment debtor has got means for paying the decree amount. On the said conclusion, the Executing Court dismissed the Execution Petition.



4. Aggrieved, the decree holder has come up with the present Civil Revision Petition.

5. The procedure to be adopted in cases where the decree is sought to be executed by arrest in detention of the judgment debtor in civil prison is prescribed by Order 21 Rule 37, 38, 39 and 40. Order 21, Rule 37 provides that a decree for money can be executed by arrest in detention by judgment debtor in a civil prison. The said rule requires the Court to issue notice to the judgment-debtor calling upon him to appear before the Court on a day to be specified in the notice and show cause as to why he should not be committed to the civil prison. Such notice was admittedly ordered and was served in the case on hand. However, the judgment debtor did not appear in response to the said notice. Sub Rule 2 of Rule 37 of Order 21 provides that if the judgment debtor does not appear pursuant to the said notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

6. Order 21, Rule 37((2) reads as follows:-

"37(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor."

7. The Executing Court straight-away examined the means evidence and concluded that the judgment debtor has no means. I think that such procedure is acceptable. Once the notice is ordered under Sub Rule 1 of Rule 37 Order 21 and the judgment debtor fails to appear the Court is required to issue a warrant of arrest and secure his presence in Court under Sub Rule 2 of Rule 37 of Order 21 of C.P.C. Without complying with that statutory requirement, the Execution Court proceeded to examine the means of the judgment debtor. Therefore, the order of Executing court suffers from material irregularity and it is liable to be set aside. Hence, the Civil Revision Petition is allowed and the order of the Executing Court, dated 04.10.2012 dismissing the Execution Petition is set aside. The Execution Petition is remitted back to the Court below for being disposed of strictly as per Order 21 Rule 37 to 40 of C.P.C. No costs.

Sd/-

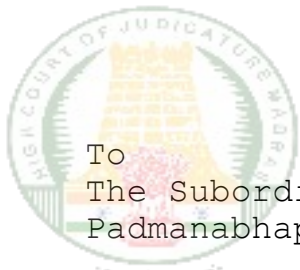
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To
The Subordinate Judge,
Padmanabhapuram.

+1 CC to M/s.K.SREE KUMARAN NAIR, Advocate (SR-102955[F] dated
02/12/2019)

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