

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.1057 of 2010
and M.P.No.1 of 2010

Sadanandan

..Petitioner

Vs

1.Sudakaran
2.Sundaran

.....respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 07.01.2010 made in E.P.No.84 of 2008 in O.S.No.293 of 2002 on the file of the Court of the Subordinate Judge of Nilgiris at Ootacamund.

For Petitioner : Mr. T.P.Manoharan
For Respondents : Mr.V.Rajesh

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 07.01.2010 made in E.P.No.84 of 2008 in O.S.No.293 of

2002 on the file of the Court of the Subordinate Judge of Nilgiris at Ootacamund.

2. The respondents filed a suit against the petitioner for recovery of money. The said suit was decreed. Thereafter, the petitioner filed execution petition for arrest of the Judgment Debtor. In the said petition, the executing Court passed an order and issued warrant. Challenging the said order passed by the executing court, the respondent therein filed the present revision petition before this Court.

3. The learned counsel for the petitioner would submit that the execution petition filed for arrest of the Judgment Debtor. It is for the petitioner/deeree holder to prove the means of the judgment debtor. The petitioner has clearly stated that he has no means to pay decretal amount, however, the executing Court has put the burden only on the judgment debtor. Therefore, it is against the principles of law as laid down by this Court in a decision reported in (2006) 3 CTC 546 (*GANESH VS. SANKARAN AND ANOTHER*) and therefore, he seeks interference of this Court.

4.The learned counsel for the respondents would submit that the petitioner purchased the tea leaves for business and since he failed to repay the money, the respondents filed the suit for recovery. The petitioner, despite sufficient opportunities after decreeing the suit, failed to repay the amount. Therefore, the respondents were constrained to move the Executing Court. The petitioner herein has simply denied the means but he has not come to the witness box for examining himself to prove the same. Therefore, the order passed by the executing Court warrants no interference and the revision petition is liable to be dismissed.

5. Heard the learned counsel on either side. I have perused the entire records.

6. The respondents obtained decree against the petitioner on 21.04.2003. Subsequently, the respondents filed execution petition before the executing Court in E.P.No.84 of 2008 for arrest. In execution petition, they have filed an affidavit and also filed proof affidavit and means of the petitioner. Though, the petitioner while cross examining the respondents, has suggested that this is not about the property but however, the suit itself is filed for recovery of money. For the purchase of tea leaves for business

purpose and sustaining loss in the said business, the petitioner has not filed IP to show that he has no means at all. Though, it is not mandatory that the person to file IP, but however, it is one of the piece of evidence and the person doing business transaction, has no means to pay his creditors. Even during the pendency of execution petition, he has not taken any steps to prove that he has no sufficient means to pay the decretal amount by filing IP nor he sustained loss in the business and further the transaction is purely for business transaction. Even though in execution petition for arrest, the petitioner has to prove the means of the judgment debtor, the burden lies only on him to prove that judgment debtor has means to pay the decretal amount. Admittedly, from the judgment itself it is very clear that the judgment debtor purchased tea leaves for business purpose. Since suit transaction itself for business transaction, it is for the petitioner herein has to prove that there is loss in the business and he has no means to pay the decree amount. Therefore, under these circumstances, the citation referred to by the learned counsel for the petitioner is not applicable to the present case on hand.

7. Therefore, there is no merit in the revision petition. This Court does not find any perversity in the order passed by the executing Court. Therefore, the Revision Petition is dismissed. The executing Court is

directed to proceed further in accordance with law. No costs. Consequently,
connected miscellaneous petition is closed.

29.07.2020

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To

1. The Subordinate Judge of Nilgiris at Ootacamund
2. The Section Officer, V.R. Section, High Court, Madras



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P.VELMURUGAN,J.

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15.07.2010