

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.135 of 2010
and M.P. No.1 of 2010

Parasmal Lunawat

... Petitioner

Vs

M/s.Margadarsi Chits Ltd.,
Rep. By its Foreman,
'Kumaran Building' No. AA- 152, 3rd Avenue,
Anna Nagar, Chennai – 40.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 13.11.2009 made in E.P.No.1368 of 2006 in A.R.C.No.681 of 2005 on the file of the X Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. J.Ram

ORDER

The matter is heard through "Video Conferencing".

This Civil Revision Petition is filed to set aside the order dated 13.11.2009 made in E.P.No.1368 of 2006 in A.R.C.No.681 of 2005 on the file of the X Assistant Judge, City Civil Court, Chennai.

2.The petitioner herein is respondent in E.P.No.1368 of 2006 and 3rd judgment debtor in A.R.C.No.681 of 2005 on the file of the Arbitrator, Central Chit Fund Cases, Chennai North. The respondent filed the said E.P. for arrest of the petitioner. The petitioner filed counter and opposed the E.P. The learned Judge ordered arrest of the petitioner.

3.Against the order dated 13.11.2009 made in E.P.No.1368 of 2006 in A.R.C.No.681 of 2005, the petitioner has come out with the present Civil Revision Petition.

4.The Civil Revision Petition is filed in the year 2010. From the bundle, it is seen that no notice was ordered to the respondent in Civil Revision Petition. At the request of the learned counsel for the petitioner, on 18.01.2010, the case was adjourned to 22.01.2010. On 22.01.2010, there was no representation on behalf of the petitioner. Subsequently, on three occasions, till 15.02.2010, at the request of the learned counsel appearing for the petitioner, the Civil Revision Petition was adjourned and no notice was ordered to the respondent.

5.The learned counsel appearing for the petitioner contended that the petitioner has no movable or immovable properties and has no means to pay the decretal amount. The learned Judge without considering the averments in the counter affidavit, has ordered arrest of the petitioner. By ordering arrest, the personal liberty of the individual is affected. The order of arrest is contrary to the judgment of the Hon'ble Apex Court and this Court. The respondent-decree holder failed to prove that the

petitioner has sufficient means to pay the decretal amount and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition.

6.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7.The grievance of the petitioner is that, the learned Judge failed to consider the contention of the petitioner that he has means to pay the decretal amount and that respondent failed to prove the means of the petitioner to pay the decretal amount. From the order of the learned Judge, it is seen that the respondent has examined its Manager as P.W.1 and copy of the Income Tax Returns dated 21.07.2008 of the petitioner was marked as Ex.P2. The petitioner examined himself as R.W.1 and he did not mark any document. The petitioner has not denied Ex.P2. Further, the petitioner, in the chief examination has stated that he is a Finance Broker and he gets commission for introducing persons to Financier. The

petitioner has not produced his Account books to show that he is only getting meagre amount and he is unable to maintain his family. The learned Judge considering the entire materials on record, Ex.P2, proof affidavit, the evidence of the petitioner and held that the petitioner has means to pay the decretal amount and ordered E.P. There is no error in the said order of the learned Judge warranting interference by this Court.

8.In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

30.09.2020

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To

The X Assistant Judge,
City Civil Court, Chennai.

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V.M.VELUMANI, J.

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