

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4163 of 2015

and

M.P.No.1 of 2015

R.Senthilkumar Petitioner

Vs.

R.Sadagopan ... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the order in E.P.No.12 of 2013 in O.S.No.34 of 2006, on the file of the Additional Subordinate Court, Chengalpattu, dated 16.02.2015.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed by the respondent/decreed holder against the order passed by the Additional Sub-Judge, Chengalpattu in E.P.No.12 of 2013 in O.S.No.34 of 2006 dated 16.02.2015.

2. The respondent herein had filed an Execution Petition in E.P.No.12 of 2013 in O.S.No.34 of 2006 on the file of the Additional Sub-Judge, Chengalpattu against the petitioner herein for realization of the decree amount of Rs.3,92,354.50/- by arrest and detention of the petitioner herein in a civil prison. The learned Additional Sub-Judge, Chengalpattu, by the order dated 16.02.2015 had allowed the said Execution Petition and ordered to arrest the petitioner herein. Feeling aggrieved, the petitioner/judgment debtor holder has filed the present Civil Revision Petition.

3. Though the notice which was sent by the Court through RPAD served on the respondent and his name also printed in the cause-list, he has not appeared either in person or through counsel. Hence, after hearing Mr.V.Lakshminarayanan, the learned counsel for the petitioner and perusing the materials filed along with this petition, order is being passed being in this Civil Revision Petition.

4. The learned counsel for the petitioner has submitted that the Executing Court has allowed the Execution Petition merely based on the means affidavit which has been filed by the respondent/decree

holder. He further submitted that eventhough the petitioner herein made a specific request to give an opportunity to cross examine the decree holder with regard to the facts mentioned in the means affidavit, the Executing Court has rejected the said request and passed an order stating that Order 21 Rule 11-A of CPC does not say that evidence should be recorded before passing the order for arresting and detaining the judgment debtor. He further submitted that the approach of the Executing Court is against the settled principles of law and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the Executing Court and remit the matter to the Executing Court to take evidence with regard to the means and pass appropriate orders.

5. The learned counsel for the petitioner in support of his contention relied upon the decision in *Jolly George Varghese and another, (1980) 2 SCC 360*.

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6. At this juncture, it would be relevant to refer to Order 21 Rule 40 (1) of CPC, which reads as follows:-

“40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest:-

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under Rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.”

7. A bare reading of the aforesaid provision shows that when a judgment debtor appears before the Court in obedience to a notice issued under Rule 37, or is brought before the Court after being arrested in execution of a decree for the payment, the Court shall proceed to hear the decree holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment debtor an opportunity of showing cause why he should not be committed to the civil prison.

8. In this case, the Executing Court has not followed the aforesaid procedure. It has simply passed an order relying upon the means affidavit said to have been filed under Order 21 Rule 11-A of

CPC. Order 21 Rule 11-A of CPC mandates to file an affidavit in support of the application for arresting the judgment debtor i.e., for entertaining the application for arrest, means affidavit has to be filed. After entertaining the said application, the other provisions which are mentioned under Order 21 have to be followed. In this case, it appears that the Executing Court after entertaining the said application, issued notice by invoking provision under Order 21 Rule 22 of CPC to the judgment debtor. The judgment debtor after receipt of the said notice, entered appearance through counsel and filed counter opposing the said Execution Petition. The trial Court ought to have conducted an enquiry and directed the parties to adduce evidence with regard to the rival contentions as contemplated under Order 21 Rule 40 of CPC and only thereafter, the Executing Court should have passed an order in the said Execution Petition. Instead of that, it had passed order merely based on the means affidavit and hence, the impugned order is liable to be set aside.

9. In *Jolly George Varghese and another* (cite supra) also the aforesaid principles have been reiterated by the Hon'ble Supreme Court.

P.RAJAMANICKAM.J.,

dna

10. In the result, this Civil Revision Petition is allowed. The order passed by the learned Additional Sub-Judge, Chengalpattu, in E.P.No.12 of 2013 in O.S.No.34 of 2006 dated 16.02.2015 is set aside. The matter is remitted back to the Executing Court to dispose of the Execution Petition by following the procedure contemplated under Order 21 Rule 40 of CPC. No costs. Consequently, connected Miscellaneous Petition is also closed.

10.11.2020

Internet : Yes/No
dna

To

The Additional Sub-Judge, सत्यमेव जयते
Chengalpattu.

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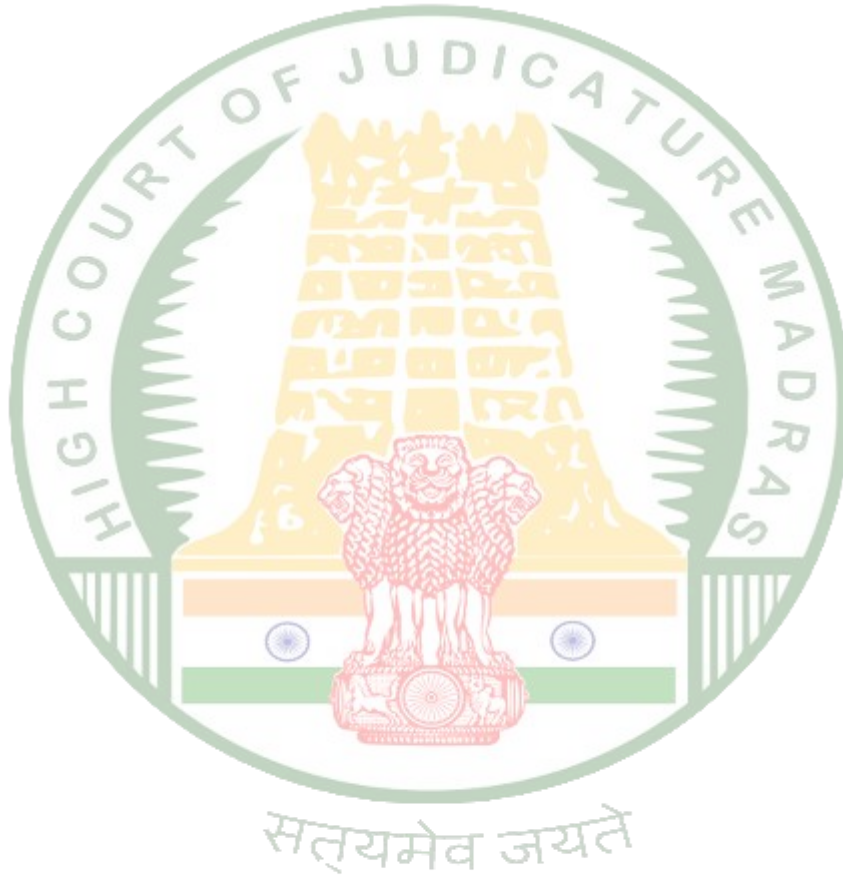
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