

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4225 of 2015

and

M.P.No.1 of 2015

- 1.Selvaaraj
- 2.Govindasamy(Deceased)
- 3.Padavusu
- 4.Chinnapillai
- 5.Minor Saravan
- 6.Minor Kasthuri
- 7.Minor Annadurai

(Petitioners 3 to 7 brought on record as LRs of the deceased 2nd petitioner viz., Govindasamy vide Court order dated 22.03.2018 made in CMP.No.3060 to 3062/2018 in CRP.No.4225/2015).

... Petitioners

Vs.

Sumathi

... Respondent

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Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order of the Principal District Munsif's Court, Ariyalur, dated 05.08.2015 in E.P.No.16 of 2013 in O.S.No.168 of 2004.

For Petitioners : Mr.P.Valliappan

For Respondent : Mr.R.Venkatesulu

ORDER

This Civil Revision Petition has been filed by the respondents/defendants 2 and 3 against the order passed by the Principal District Munsif, Ariyalur, in E.P.No.16 of 2013 in O.S.No.168 of 2004 dated 05.08.2015.

2. The respondent herein had filed an execution petition in E.P.No.16 of 2013 on the file of the Principal District Munsif, Ariyalur, to execute the money decree by arrest and detention of the petitioners herein in civil prison and recover the decree amount from them. The learned District Munsif by the order dated 05.08.2015 had allowed the said execution petition. Feeling aggrieved, the respondents 1&2/ defendants 2 & 3 have filed the present Civil Revision Petition.

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3. Heard Mr.P.Valliappan, the learned counsel for the petitioners and Mr.R.Venkatesulu, the learned counsel for the respondent.

4. The learned counsel for the petitioners has submitted that the respondent herein after obtaining money decree had filed an execution petition in E.P.No.16 of 2013 for realization of decree amount by arrest and detention of the petitioners herein in civil prison. He further submitted that Order 21 Rule 11-A of CPC insists that the execution application for arrest of the judgment debtor shall contain grounds or an affidavit shall be filed in support of the said application containing the grounds, but in this case, the said mandatory provision has not been complied with and as such, the Executing Court should not have taken the said execution petition on file. He further submitted that the Executing Court after entertaining the said execution petition issued notice under Order 21 Rule 37 of CPC and after receipt of the said notice, the petitioners herein entered appearance and filed a counter, opposing the said execution petition. He further submitted that the Executing Court without following the mandatory provision of Order 21 Rule 40 of CPC, it had simply passed an order stating that the said execution petition is allowed.

5. He further submitted that the said provision insists that evidence should be recorded with regard to the means and an opportunity also should be given to the judgment debtor to adduce rebuttal evidence but in this case, the Executing Court has not followed the said mandatory provision and simply passed an order that the execution petition is allowed and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the said Executing Court.

6. Per contra, the learned counsel for the respondent/deGREE holder has submitted that the respondent has filed a suit in O.S.No.168 of 2004 based on the promissory note for recovery of Rs.62,600/- with subsequent interest. In the said suit, the petitioners herein remained exparte and hence, an exparte decree was passed against them on 26.07.2007 and thereafter, for nearly 8 years, the petitioners have not taken any steps to set aside the exparte decree or come forward to pay the decree amount and hence, the respondent had filed an execution petition in E.P.No.16 of 2013 for realization of the decree amount by arrest and detention of the petitioners herein. He further submitted that the petitioners have not stated any valid reason for non payment of the decree amount and taking into consideration the said facts, the Executing

Court had rightly allowed the said execution petition and in the said order, this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

7. A perusal of the typed set of papers filed by the petitioners herein shows that the respondent herein had filed a suit in O.S.No.168 of 2004 on the file of the Additional District Munsif, Ariyalur and obtained a decree on 26.07.2007 for recovery of Rs.62,600/- with subsequent interest. Thereafter, the respondent herein had filed an execution petition in E.P.No.16 of 2013 on the file of the Principal District Munsif, Ariyalur, for realization of the decree amount by arrest and detention of the petitioners herein.

8. At this juncture, it would be relevant to refer to Order 21 Rule 11-A of CPC which reads thus:-

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“11-A. Application for arrest to state grounds:-

Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.”

9. A bare reading of the aforesaid provision shows that where, an execution petition is filed for the arrest and detention in prison of the judgment-debtor, in the said petition, the grounds on which arrest is applied for should be mentioned or a separate affidavit shall be filed mentioning the reason but, in this case, it appears that the respondent herein has not stated any reason in the execution petition to arrest the petitioners herein. She has not filed an affidavit also with regard to the means of the petitioners herein. So, the Executing Court should not have entertained the said execution petition.

10. It is also to be pointed out that Order 21 Rule 37 of CPC says that where an application is filed for execution of decree for payment by arrest and detention in the civil prison, notice shall be sent to the judgment debtor calling upon him to appear before the Court and show cause why he should not be committed to the civil prison. It appears in this case the Executing Court, by following the aforesaid provision, had sent a notice to the petitioners herein. After receipt of the said notice, the petitioners herein appeared before the Executing Court and filed a counter opposing the said petition. In such a case, by following the procedure prescribed under Order 41 Rule 40 of CPC, the

Executing Court should have conducted an enquiry by recording the evidence with regard to the means of the judgment debtor but, the Executing Court has not followed the said procedure. It had passed the order after hearing both sides counsel and also perusing two exhibits. It has not at all recorded any finding as to whether, the judgment debtor is having means to pay the decree amount, but they are purposely evading to pay the said amount. Further, the impugned order does not say that for how much period the judgment debtor has to be detained and therefore, the impugned order is liable to be set aside.

11. Normally, if the Revision petition is allowed on the ground that no evidence has been recorded, the matter will be remitted back to the Executing Court to follow the procedure, which is prescribed under Order 21 Rule 40 of CPC and pass an order but, in this case, along with the execution petition, no affidavit has been filed with regard to the means of the judgment debtors and in such a case, the execution petition itself, should not have entertained and therefore, this Court is of the view that no purpose will be served in remitting the matter back to the Executing Court. It is always open to the decree holder to file a fresh execution petition by following procedure.

P.RAJAMANICKAM.J.,

dna

12. In the result, this Civil Revision Petition is allowed. No costs. The order passed by the learned Principal District Munsif, Ariyalur, in E.P.No.16 of 2013 in O.S.No.168 of 2004 is set aside and the said Execution Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

21.12.2020

Index :Yes/No
dna

To

1.The Principal District Munsif Court,
Ariyalur.

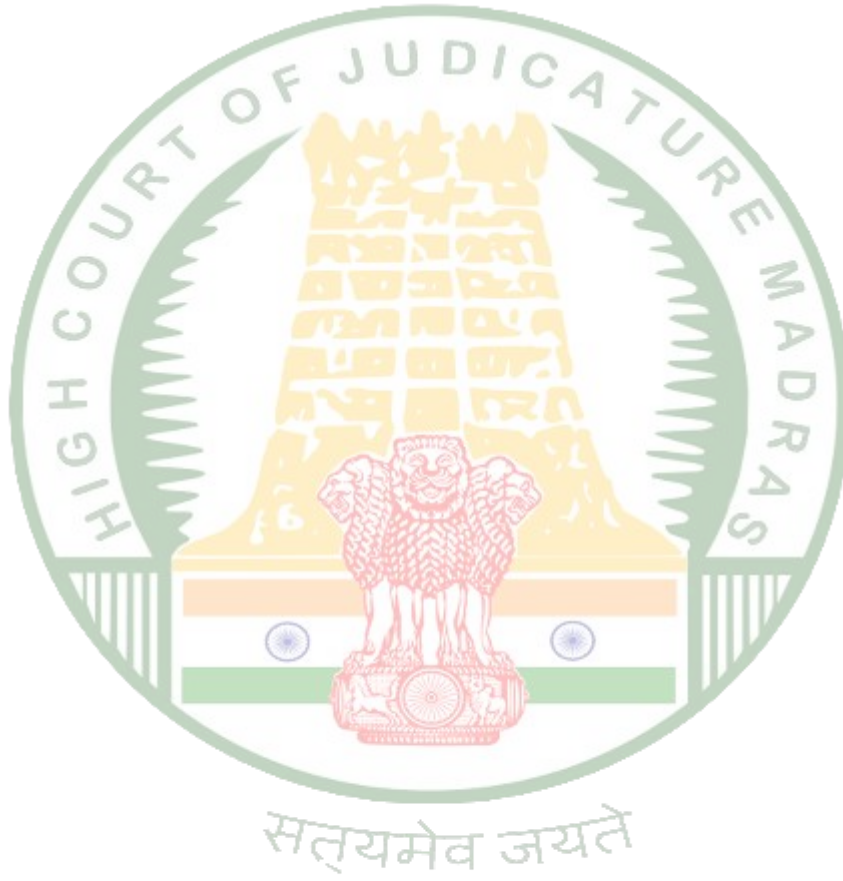
2.The Additional District Munsif Court,
Ariyalur.

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and

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