

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.3273 of 2013

1.C.Jayasankar

2.C.Baskaran ... Petitioners/Defendants/Respondents

Vs.

G.Chandrasekaran ... Respondent/Petitioner/Plaintiff

Prayer: This Civil Revision Petition is filed under Section 115 of C.P.C. praying to set aside the order and decree dated 28.01.2013 made in E.P.No.87 of 2005 in O.S.No.328 of 1999 on the file of the Principal Sub Court, Puducherry.

For Petitioners : Mr.D.Ravichandar

For Respondent : Mr.Stalin Abhimanyu

O R D E R

The matter is heard through Video Conferencing.

This Civil Civil Revision Petition is filed to set aside the fair and decreetal order passed in E.P.No.87 of 2005 in O.S.No.328 of 1999 dated 27.01.2013 on the file of the Principal Sub Court, Puducherry.

2.The petitioners are judgment debtor / defendants and the respondent is plaintiff / decree holder in O.S.No.328 of 1999. The respondent / plaintiff filed the suit for recovery of money against the petitioner and suit was decreed by the judgment and decree dated 29.10.2004. The respondent / decree holder filed E.P.No.87 of 2005 to recover the E.P. Amount with subsequent interest and costs and in their default to pay the same to order to arrest of petitioners/ judgment debtors and put them in civil prison. According to the respondent, the petitioners have sufficient means to pay the decreetal amount in one lumpsum, but failed to pay the amount. The 2nd petitioner is carrying on business in the name and style of "Mani Oil & Dhall Mills, Sooramangalam Village, Nettapakkam Commune, Pondicherry State".

The petitioners filed counter in the E.P. and stated that the petitioner's are native of Mandagapattu Village, Villupuram Taluk, Tamil Nadu and Principal Sub Court, Pondicherry has no jurisdiction to entertain the E.P. The 2nd petitioner is not carrying on Oil and Dhall business as alleged by the respondent. The petitioners are not having sufficient means to pay the decretal amount and prayed for dismissal of E.P.

2(a).The learned Judge, by the order dated 28.01.2013 ordered arrest against the petitioners holding that the respondent can choose the mode of execution of decree and respondent cannot be compelled to choose a particular mode of execution.

3. Against the said order dated 27.01.2013 made in E.P.No.87 of 2005 in O.S.No.328 of 1999, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioners contended that the order of the learned Judge is non-speaking order and the same has been passed mechanically. The order of arrest must be the last resort in execution of decree and when the judgment debtor is bonafidely unable to pay the decretal amount, detaining him in Civil Prison is violative of Article 21 of Constitution of India and prayed for setting aside the order of the Learned Judge.

5. The learned counsel appearing for the respondent submitted that petitioners are carrying on Oil and Dhall business in the name and style "Mani Oil & Dhall Mills, Sooramangalam Village, Nettapakkam Commune, Pondicherry State" and have sufficient means to pay the decretal amount. Wwhen the order of arrest was made on the terms of settling the amount, they are dragging on the proceedings from 2005 to 2013. The learned Judge has considered the above facts and ordered arrest enabling the decree holder to enjoy the fruits of the decree and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the entire materials on record.

7. From the materials available on record, it is seen that the contention of the respondent is that petitioners are carrying on business in the name and style "Mani Oil & Dhall Mills, Sooramangalam Village, Nettapakkam Commune, Pondicherry State" and have sufficient means to pay the decretal amount. Whereas, it is the contention of the petitioners that they are not carrying on any business and they do not have any means to pay the decretal amount. When such a stand is taken by the

petitioners/judgment debtors, it is for the respondent/decreed holder to prove the contention of the decreed holder that petitioners have sufficient means by acceptable evidence. The learned Judge ought to have recorded the evidence with regard to rival contentions and passed order on merits. The learned Judge, without considering the contention of the petitioners that they do not have means to pay the decretal amount, ordered arrest on the ground that it is for the respondent to choose the mode of execution. The learned Judge failed to exercise the jurisdiction conferred on him properly and without giving finding that whether petitioners have sufficient means to pay the decretal amount or not, has ordered arrest. The learned Judge has committed grave irregularity.

8. For the above reason, the order of the learned Judge is set aside and the E.P.No.87 of 2005 in O.S.No.328 of 1999 is remanded back to the Execution Court for fresh consideration on merits. It is open to the parties to let in both oral and documentary evidence to substantiate their respective contention. The E.P. is of the year 2005. Hence, the learned Principal Subordinate Judge, Puducherry is directed to dispose of the E.P. as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order.

9. In the result, this Civil Revision Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Puducherry.

+1cc to Mr.D.Ravichander, Advocate Sr.29886

C.R.P.No.3273 of 2013

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