

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.2817 of 2018
and CMP No.16477 of 2018

1. Thangavel

2. Sundararaj

.. Petitioners

Vs.

Mahindra & Mahindra Financial Service Ltd.,
Rep by its Power of Attorney

K.Thangadurai,

Having office at Salem Branch Office,

215/4, First Floor, Abiroopa Tower,

Omalur Main Road, Meiyanoor Village,

Salem 636 004.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 20.04.2018 passed in REA No.10 of 2018 in REP. No.11 of 2014 in A.R.B.1949 of 2012 on the file of the IIIrd Additional District Judge at Salem.

For Petitioners : Ms. Revathi
for M/s.R.Nalliyappan

For Respondent : Mr.A.Prabhakaran

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is directed against an order dismissing an application seeking permission to file additional counter in an Execution Petition.

2. The Execution Petition has been filed for execution of an award in ARB No.1949 of 2012, the respondent which is a financial services Company had lent monies to the petitioners, for purchase of a Motor Vehicle. Upon the petitioners committing default in repayment, the respondent launched Arbitration proceedings and an award came to be passed on 26.04.2013. The Execution Petition in REP No.11 of 2014 was filed seeking arrest of the petitioner.

3. The Trial Court passed an order of arrest earlier which was set aside by this Court on the ground that the procedure contemplated under Order 21 Rule 38 of the Code of Civil Procedure was not properly followed while ordering arrest. After remand by this Court, the petitioners came up with an application for seeking leave to file an additional counter.

4. A perusal of the proposed additional counter shows that the petitioners want to plead that they have no means to pay. If they have no means and if the means evidence is not sufficient enough to show that the petitioners have means to pay the award amount the Trial Court will dismiss the EP. It is for the decree holder, who seeks arrest to prove that the judgment debtor has got means, whether the judgment debtor pleads that he has no means or not. Therefore, I do not think an additional counter is necessary at all. The Executing Court is therefore justified in dismissing the Application seeking leave to file additional counter.

5. I do not find any illegality of irregularity with the order of the Trial Court, the Revision Petition therefore fails and it is accordingly **dismissed**. This will not, however, exempt the decree holder from proving the means of the judgment debtor. No costs. Consequently, the connected miscellaneous petition is closed.

jv
Index: Yes/No
Internet: Yes/No
Speaking order/Non Speaking order

R.SUBRAMANIAN, J.

jv

To

1. The IIIrd Additional District Judge,
Salem
2. The Section Officer,
V.R.Section, High Court of Madras.

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