



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2020

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THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(MD) No.2328 of 2010(NPD)

and

M.P(MD)No.1 of 2010

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Kuralarasan ... Revision Petitioner
-Vs-
Arumugam ... Revision Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the Fair and decretal Order dated 13.09.2010 made in E.P.No.291 of 2007 in O.S.No.402 of 2001 on the file of the Sub-Court, Palani.

For Petitioner : Mr.George Stephen
for Mr.S.Siva Thilakar
For Respondent : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

O R D E R

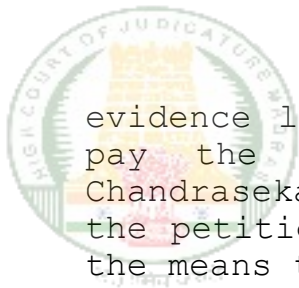
The judgment debtor, who has suffered an order of arrest at the hands of the Executing Court, has come up with this Civil Revision Petition.

2. The petitioner suffered a money decree for a sum of Rs.1,23,300/- in O.S.No.402 of 2001. The said decree was put in execution and arrest of the petitioner was sought for. The petitioner filed a counter affidavit also. He appeared before the Executing Court and undertook to pay the decree amount. Since he failed to honour the commitment made, he was directed to be arrested. Challenging the said order, the petitioner has come up with this Civil Revision Petition.

3. I have heard Mr.George Stephen for Mr.S.Siva Thilakar learned counsel appearing for the petitioner and Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates, learned counsel appearing for the respondent.

4. Mr.George Stephen, learned counsel appearing for the petitioner would contend that the Executing Court ought not to have ordered arrest without conducting means enquiry and concluding that the petitioner is attempting to delay and defeat the execution of the decree.

5. Contending contra, Mr.S.Anand Chandrasekar, learned counsel for the respondent/decreed holder would submit that the petitioner appeared before the Executing Court and agreed to pay the money and he had also sold his property prior to the attachment. Though the decreed holder examined himself as P.W.1, there was no contra



evidence let in by the petitioner to show that he has no means to pay the decree amount. Therefore, according to Mr.S.Anand Chandrasekar, the Executing Court was not right in concluding that the petitioner is not ready to pay the decree amount despite having the means to pay, cannot be interfered with.

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6. I have considered the rival submissions.

7. It is seen from the records that the petitioner had appeared before the Executing Court and had given an undertaking to pay the decree amount. Despite his undertaking, he has not paid the decree amount. The Executing Court considered the evidence on record and concluded that the petitioner has sufficient means to pay the decree amount and has also alienated the properties that belonged to him. I do not find any material irregularity in the order of the Executing Court to enable me to interfere with it under Section 115 of the Civil Procedure Code. Once the petitioner had appeared before the Executing Court and given an undertaking to pay the amount, having failed to honour the commitment, cannot avoid arrest. Hence, the Civil Revision Petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

am
To
The Sub-Court, Palani.

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-3570[F]

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