

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) No.2934 of 2016
and C.M.P.No.14929 of 2016

P.Ramarajar ... Petitioner

Vs.

Dharma Gopalan
@ Dharmaambal ... Respondent

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 03.06.2016 passed in E.A.No. 13 of 2016 in E.P.No.23 of 2012 in O.S.No.602 of 2010 on the file of the learned I Additional District Judge, Coimbatore.

For Petitioner : Mr.V.Balamurugane

For Respondent : Mr.P.Saravana Sowmiyan

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 03.06.2016 passed by the learned I Additional District Judge, Coimbatore, in E.A.No. 13 of 2016 in E.P.No.23 of 2012 in O.S.No.602 of 2010, thereby dismissing the petition filed by the petitioner

to make an enquiry as to the petitioner's paucity of means and pass suitable orders.

2. The petitioner is the judgment debtor in the money decree in the suit filed by the respondent herein. The respondent filed suit for recovery of money and the same was decreed by the judgment and decree dated 31.01.2012. Thereafter, the respondent filed execution petition in E.P.No.23 of 2012. The petitioner filed counter and saying that he has no means to comply the decree. Therefore the execution Court issued warrant of arrest as against the petitioner. The same was challenged by the petitioner in E.A.No.3 of 2014 and the same was also dismissed. Thereafter, the petitioner filed insolvency petition in I.P.No.38 of 2014 and it is pending on the file of the I Additional Session Court, Coimbatore. Thereafter he also filed petition under Section 55(4) of C.P.C., to make an enquiry as to the petitioner's paucity of means before executing the warrant of arrest.

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3. It is relevant to extract the provisions under Section 55(4) of

C.P.C., as follows :-

"55. Arrest and detention:-

.....

(4) Where a judgment-debtor express his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realised or commit him to the civil prison in execution of the decree."

On perusal of the prayer sought for in the present petition, the same is no way connected with the provisions under Section 55(4) of C.P.C. It will come only after the arrest.

4. In the case on hand, the petitioner delayed the execution of warrant of arrest by filing this petition under Section 55(4) of C.P.C. Further the execution petition filed in the year 2012. In fact, the petitioner

appeared before the Execution Court and also he filed counter. Thereafter he filed application on various section including the petition of insolvency, in order to defeat the right of the respondent herein. Therefore, the trial Court rightly dismissed the petition and this Court finds no illegality or infirmity in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

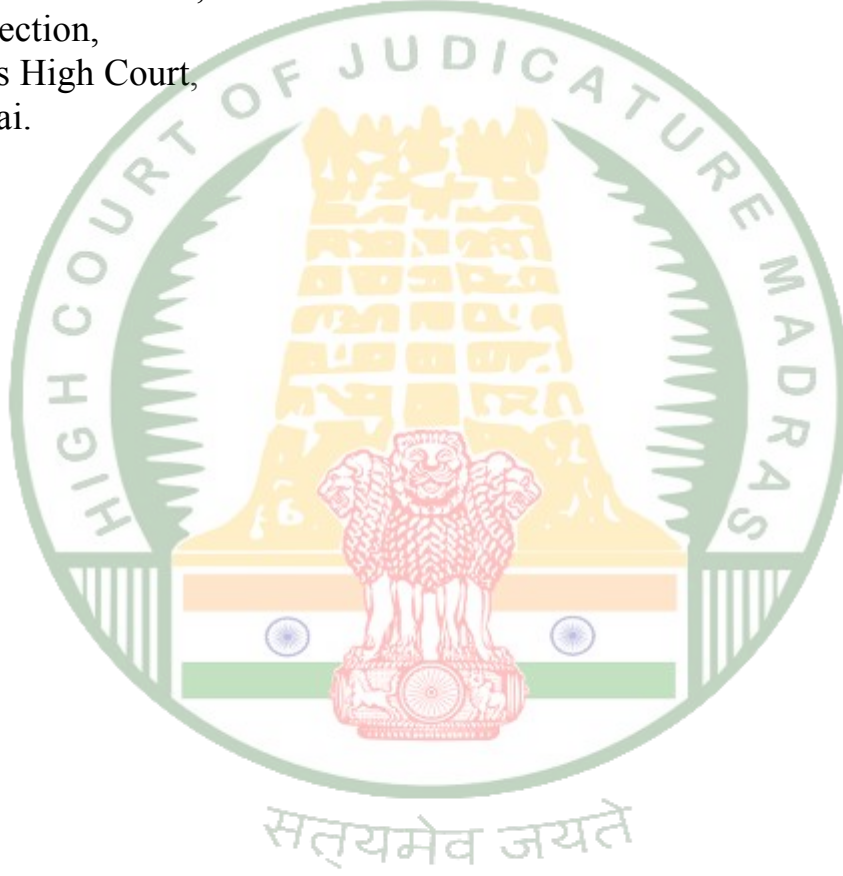
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To

1. The I Additional District Judge,
Coimbatore
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

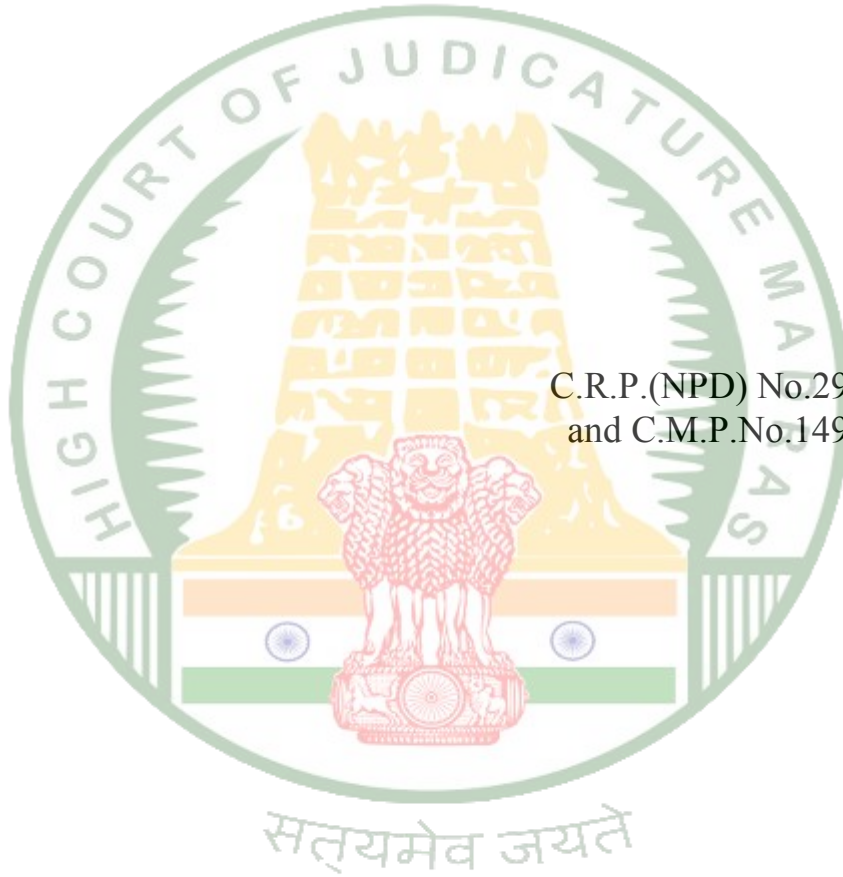


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G.K.ILANTHIRAIYAN, J.

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