

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.2381 of 2021

Kannan

...

Petitioner /
Plaintiff

versus

M.Thanikachalam

...

Respondent /
Defendant

PRAYER: Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code, to set aside the order and decree dated 14.08.2019 in E.P.No.53 of 2018 in O.S.No.166 of 2014 on the file of the learned I Additional Subordinate Judge, Cuddalore.

For Petitioner

:

Mr.P.Dinesh Kumar

ORDER

This Civil Revision Petition is filed, challenging the order dated 14.08.2019 passed by the learned I Additional Subordinate Judge, Cuddalore, in E.P.No.53 of 2018 in O.S.No.166 of 2014.

2. The learned counsel for the petitioner submitted that, petitioner filed the suit in O.S.No.166 of 2014 against the respondent for recovery of money and the suit was decreed on 17.10.2016. Petitioner filed E.P.No.53 of 2018 for arrest against the respondent for realising the decree amount. This E.P. was dismissed on the ground that, the petitioner has not proved the means of the respondent to order arrest for realising the decree amount. Challenging the said order, this Civil Revision Petition is preferred.

3. The learned counsel for the petitioner submitted that, once the respondent says that he has no means, he has to apply to declare him as insolvent. Respondent has not taken any steps to declare him as insolvent. Not only that, the respondent has not produced any materials to show that, he has no means to pay the decree amount. On the other hand, petitioner examined himself as P.W.1 and he gave evidence that the respondent has means to pay the decree amount. Without considering the petitioner's case, the Execution Petition was dismissed stating that, the petitioner has not proved that the respondent has means to pay the amount. Challenging this order, the petitioner preferred this Civil Revision Petition.

4. Considered the submissions of the learned counsel for the petitioner and perused the records.

5. Section 51 of C.P.C. deals with the procedure to be followed in execution. Proviso to Section 51 reads that,

"where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied.

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account".

6. We are not concerned with sub-section (a) and (c) in this case.

As per sub-section (b), the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof

and refuses or neglects or has refused or neglected to pay the same. This subsection mandates the decree holder to prove that, the judgment-debtor has means, to pay the decree amount. It is not required that, the judgment-debtor has to prove that he has no means to pay the decree amount.

7. It is seen from the order of the learned I Additional Subordinate Judge that, though P.W.1 said during the course of his evidence that, the respondent has lakhs of rupees in his Bank Account, he was not able to give any specific details with regard to the Bank Account of the respondent and the amount available in his account. No other evidence was produced to show that the respondent has means to pay the amount. Therefore, the learned I Additional Subordinate Judge found that, the petitioner has not proved that the respondent has means to pay the decree amount.

8. So far as the contention of the learned counsel for the petitioner that, once the respondent takes up the plea and he has no means to pay the amount, he has to apply to declare as insolvent, in the considered view of this Court, is not correct. This contingency arises only when the judgment-debtor is arrested in

execution of the decree for the payment of money and brought before the Court. Only then the Court has to inform the judgment-debtor that he may apply to declare him as insolvent. Therefore, the contention of the learned counsel for the petitioner that, after receipt of notice, the respondent has not taken any steps to declare him as insolvent and therefore, he may be arrested in execution of the money decree, cannot be accepted.

9. For the reasons stated above, this Court finds no reason to interfere with the order of the learned I Additional Subordinate Judge, Cuddalore and the order dated 14.08.2019 in E.P.No.53 of 2018 in O.S.No.166 of 2014, is hereby confirmed. This order will not stand in the way of petitioner pursuing his remedy in the manner provided under law.

10. Resultantly, this Civil Revision Petition is dismissed. However, there is no order as to costs.

WEB COPY

02.11.2021

Speaking order / Non-speaking order

Index : Yes / No

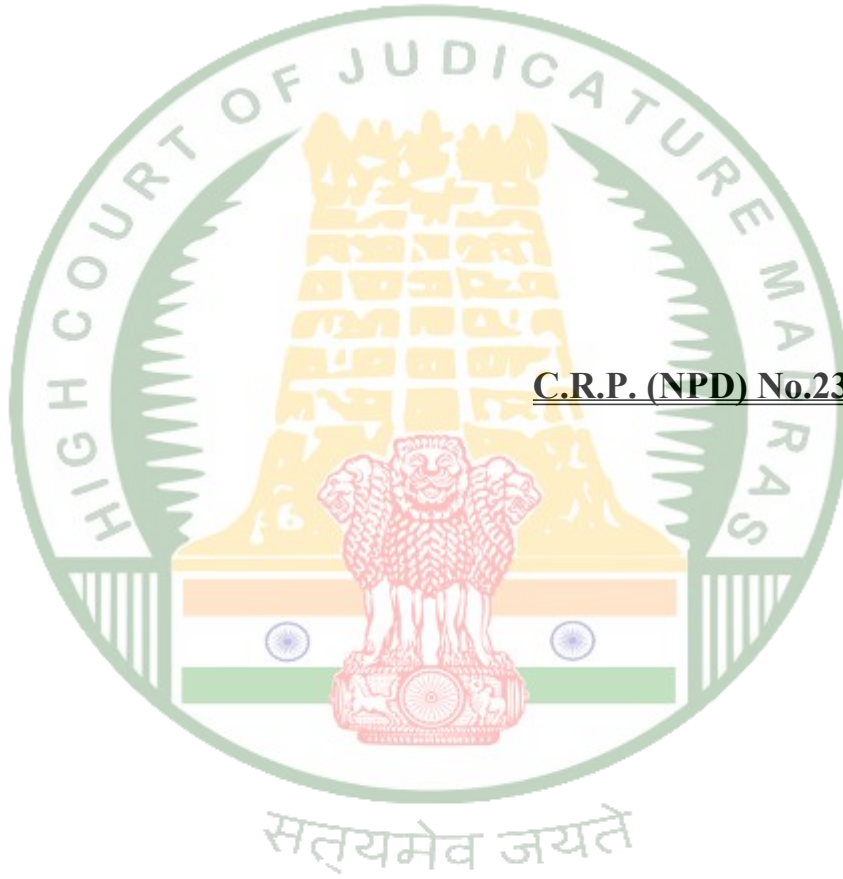
sri

G.CHANDRASEKHARAN, J.

sri

To

The I Additional Subordinate Judge,
Cuddalore.



C.R.P. (NPD) No.2381 of 2021

WEB COPY

02.11.2021