

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :02.09.2021
CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

CRP (NPD)No.4824 of 2017

and

C.M.P.No.22813 of 2017

1. Srinivasan
2. Ravikumar
3. Elangovan

.. Revision Petitioners

vs.

Sriram City Union Finance Ltd.,
Rasipuram Branch,
D.No.78E, Sivamplaza
S.R.V.Complex, Katcheri Road,
Rasipuram, Rasipuram Taluk,
rep. by its Power Agent, Branch Manager.

..Respondent

PRAYER:

Civil Revision Petition filed under Section 115 of CPC, to set aside the order and decretal order, dated 06.09.2017, made in R.E.P.No.94 of 2016, in A.C.P.No.59 of 2012, on the file of the Sessions Judge (Fast Track Mahila Court) Namakkal.

For Revision Petitioner
For Respondent

: Mr.T.Dhanyakumar
: Notice Served, no appearance

ORDER

This Civil Revision Petition, filed under Section 115 of the Code of Civil Procedure (C.P.C.) is directed against the order and decretal order, dated 06.09.2017, passed in R.E.P.No.94 of of 2016, in A.C.P.No.59 of 2012, on the file of the Sessions Judge, (Fast Track Mahila Court), Namakkal.

2. The judgment debtors are the revision petitioners herein and the respondent is the decree-holder.

3. The respondent/decreed holder filed R.E.P.No.94 of 2016, under Order 21 Rules 37 and 38 of CPC seeking arrest of revision petitioners, in order to realize the decree amount. The said Petition was resisted by the revision petitioners/judgment debtors by filing a counter, inter alia denying the liability to pay the decree amount. The Executing Court, after hearing both sides, viz., the respondent/decreed holder as well as the revision petitioners/judgment debtors, passed the following order:-

"The petitioner prays for arrest of respondents 1 to 3/judgement debtor, in order to realise the award amount. But R1 to R3 side objected, as they were not received any notice in award proceedings and they were got only lesser income. It cannot be a valid ground in this execution proceedings, unless, the respondents 1 to 3 taken steps for setting aside the award passed on 11.03.2013. Hence, it is decided to order arrest of respondents 1 to 3. Arrest by 06.10.2017. Batta in a week. "

4. Challenging the said order, the present Civil Revision Petition is filed.

5. Mr.T.Dhanyakumar, the learned counsel appearing for the revision petitioners would submit that the main grievance of the revision petitioners is that, without adjudicating on the means of the revision petitioners to pay the decree amount, or substantial part thereof, the Court below passed a non-speaking order of arrest against them for non-payment of decree amount. Further, the learned counsel submitted that it is not the case of the respondent that the revision petitioners are evading from

payment of the decree amount, since the first and second revision petitioners are working in Electricity Board and earning a sum of Rs.12,200 and Rs,16,500/- respectively as on the date of filing of the Execution Petition and insofar as the third revision petitioner is concerned, he has no work, since all the revision petitioners were living hard life and has no sufficient source of income, the revision petitioners were not in a position to pay the decree amount. Therefore, the learned counsel submitted that, while passing the order of arrest, the Court below has to give a clear-cut finding on the issue of means to pay the decree amount or substantial part thereof. The said aspect was not considered by the Court below and further against the award amount, the respondent/decree-holder directly filed the Execution Petition for arrest of the revision petitioners and the Court below also in a mechanical manner passed the order of arrest of the revision petitioners. Therefore, the learned counsel prayed for setting aside the order of arrest passed against the revision petitioners.

6. Heard the learned counsel appearing for the revision petitioners. So far as the respondent, Sri Ram City Union Finance Limited is concerned,

despite service of notice on them and their name is printed in the cause list, none appeared on their behalf.

7. This Court perused the cryptic order of the Court below. The Hon'ble Supreme Court, in the judgment reported in **(1980) 2 SCC 360** in the case of **(Jolly George Varghese and another vs. The Bank of Cochin)** held that to cast a person in prison, because of his poverty and consequent inability to meet his contractual liability is too violative of Article 21, unless, there is proof of the minimal fairness of his willful failure to pay, inspite of his sufficient means and absence of more terribly pressing claims on his means. It was further held that there must be some element of bad faith beyond mere indifference to pay.

8. Therefore, though the judgment debtors may have some source of income, but, duty is cast upon the Executing Court to conduct an inquiry, which is popularly known as the "means inquiry", to ascertain that despite sufficient income in the hands of the judgment debtors, they are deliberately refusing to comply with the demand of the decree-holder and satisfy the

decree amount. The Executing Court, without conducting such an enquiry, cannot mechanically direct for the arrest and detention of the judgment debtor. What is required to be seen is, Whether there has been a deliberate attempt on the part of the judgment debtor to deny the decree-holder's claim?

9. In the instant case, the first revision petitioner is said to have been working in Electricity Department and earning Rs.12,200/- per month and he is spending the same for his children's education and living hard life. Similarly, the second revision petitioner is said to have been working in the Electricity Department and earning Rs.16,500/- per month and the same is required to meet out the educational expenses of his two daughters and he is also living hard life. Insofar as the third revision petitioner is concerned, he has no work at all. Hence, the endeavor of the Executing Court should be to verify and ascertain the source of income of the revision petitioners and find out whether the reasons stated by the revision petitioners/judgement debtors for non-payment of the decree amount are true or not. Secondly, the Executing Court should have considered that their monthly salary is

Rs.12,200/-(insofar as first revision petitioner is concerned) and Rs.16,500/- (so far as the second revision petitioner is concerned), which could be utilized to settle the decree amount.

10. However, such an inquiry, having not been conducted by the Executing Court, the impugned order suffers from infirmity and hence, the same is liable to be set aside.

11. The Order of the Court below is non speaking order. Adequate and intelligent reasons must be given for judicial decisions. The requirement of giving reasons for the decision is essence and virtually a part of “due process”.

12. Thus, this Court finds that there is fault in the decision making process of the Court below and therefore, as stated supra, the order passed by the Court below is set aside.

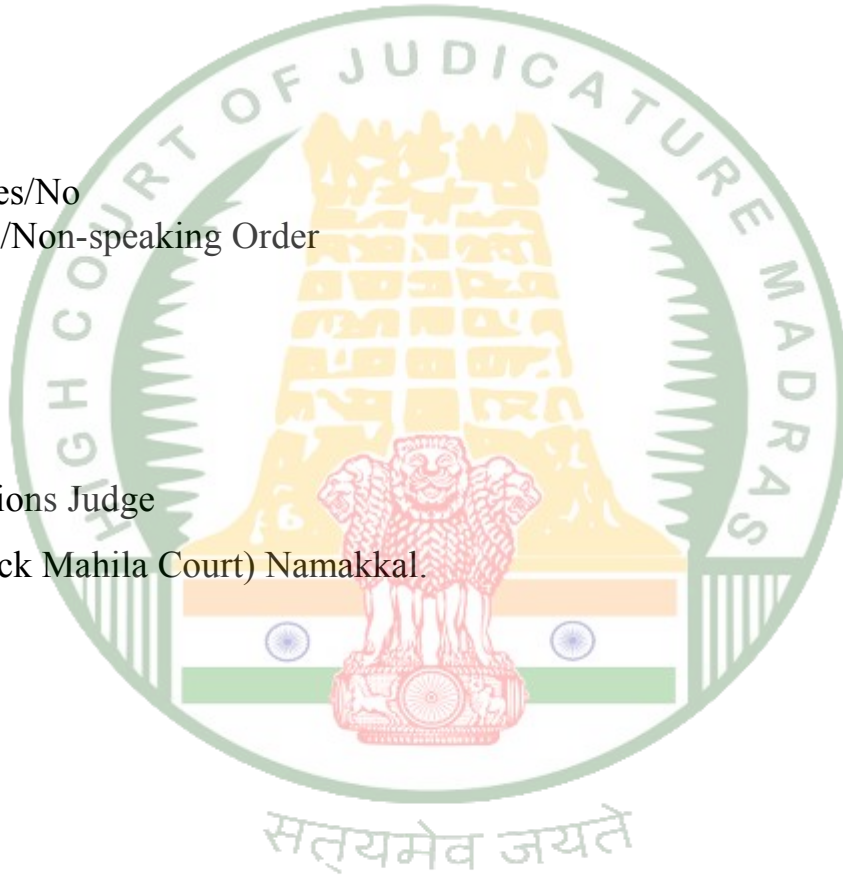
13. Accordingly, the Civil Revision Petition is allowed, the order impugned herein is set aside. No costs. Consequently, connected CMP is closed.

02.09.2021

Index: Yes/No
Speaking/Non-speaking Order
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To

The Sessions Judge
(Fast Track Mahila Court) Namakkal.



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Krishnan Ramasamy, J.,
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