



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (MD) Nos.98 and 99 of 2021
and
CMP (MD) .Nos.637 and 638 of 2021

P.Radhakrishnan

... Petitioner/Petitioner/
Respondent/Defendant
(in both CRPs)

vs.

A.S.S.Sethurama Subramanian

... Respondent/Respondent/
Petitioner/Plaintiff
(in both CRPs)

Common Prayer: Petition filed under Article 227 of the Constitution of India, to direct the learned Subordinate Judge, Srivilliputhur to number the Execution Application filed by the petitioner in Unnumbered E.A.No. of 2020 in E.P.No.1 of 2016 in O.S.No.218 of 2010 filed on 14.12.2020 on the file of the Subordinate Court, Srivilliputhur.

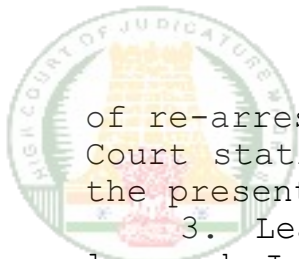
For Petitioner : Mr.K.Sudalaiyandi (in both CRPs)

For Respondent : Mr.B.Rajesh Saravanan (in both CRPs)

COMMON ORDER

These Civil Revision Petitions have been filed by the petitioner-judgment debtor against the return of the execution application filed by the petitioner on technical grounds and therefore, the petitioner is before this Court.

2. The respondent-decree holder has obtained a money decree dated 28.01.2013 in O.S.No.218 of 2010 against the petitioner-judgment debtor for a sum of Rs.7,69,500/- with interest at 18% p.a. from the date of suit till the date of decree and at 6% p.a. from the date of decree upto the date of payment on the principal amount of loan Rs.5,00,000/-. The respondent-decree holder has filed the Execution Petition in E.P.No.1 of 2016 for arrest and detention of the petitioner and the same was allowed on 06.08.2018 by the Court below. Again on 30.11.2020, the Court below passed orders to re-arrest the petitioner-judgment debtor. Thereafter, the petitioner-judgment debtor filed unnumbered E.A.No.of 2020 to recall the order



of re-arrest dated 30.11.2010 and the same was returned by the lower Court stating that the petition is not maintainable. Against which, the present revision petition has been filed.

3. Learned counsel for the petitioner would state that the learned Judge failed to prove the means of the petitioner before passing the order of arrest and no opportunity was given by the learned Judge to the petitioner to record the reasons. Hence, the learned Judge without even numbering the application has returned the execution application and therefore, the petitioner is before this Court.

4. Learned counsel for the respondent would state that in an earlier occasion, on the order of arrest, the petitioner filed the civil revision petition before this Court in CMP(MD).No.595 of 2019 in CRP(MD).No.SR2566 of 2019, where the petitioner come forward with the petition before this Court challenging the order of arrest with the condone delay petition. In that petition, this Court passed an order to deposit 50% of the decree amount in E.P.No.1 of 2016 and the said order has not been complied with till date and therefore, the civil revision petition has also not numbered.

5. Heard the learned counsel for the petitioner as well as the respondent.

6. Admittedly, in an earlier occasion, the petitioner come forward with the petition before this Court challenging the order of arrest with the condone delay petition and this Court passed an order to deposit 50% of the decreed amount which has also not been complied with by the petitioner till date. Now, the petitioner filed the execution application before the lower Court to recall the order of arrest and the lower Court had returned the said application without numbering. Again the petitioner has filed the present civil revision petition to number the unnumbered execution application is a clear abuse of process of the Court and I do not find any infirmity in the order passed by the learned Judge.

7. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)



To
1. The Subordinate Court,
Srivilliputhur.

+1 CC to M/s.K.SUDALAIYANDI, Advocate (SR-14758[F] dated 31/03/2021

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ORDER MADE IN
CRP (MD) Nos.98 and 99 of 2021
DATED : 30.03.2021

GS (18.05.2021) 3P 3C