



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.2784 of 2018

M.Ragupathi

.. Petitioner

-VS-

R.Selvaraj

.. Respondent

Prayer :- Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order passed by the learned District Munsif, Thuraiyur in E.P.No.48 of 2017 in O.S.No.315 of 2004 dated 13.02.2018.

For Petitioner : Mr.N.Kamesh

For Respondent : Mr.V.S.Rishikesh,
Legal Aid Counsel

ORDER

The decree holder, whose execution proceedings has been dismissed, has filed this Revision.

2.The revision petitioner/plaintiff had filed a suit in O.S.No.315 of 2004 against the respondent/defendant for recovery of a sum of Rs.50,200/- together with subsequent interest @ 18% per annum from the date of suit till the date of payment.

3.The petitioner would submit that on 12.05.2002, the respondent had borrowed a sum of Rs.40,000/- to meet his urgent expenses and had executed a demand promissory note in favour of the petitioner. However, contrary to the assurance, the respondent had not paid the money.

4.The petitioner would state that despite the fact that the respondent is working as a Clerk in the Lakshmi Vilas Bank Ltd., Erode and is drawing a monthly salary of Rs.8,500/-, he has not repaid the money thereby, constraining the petitioner to file the



above suit.

5.The respondent remained ex-parte and an ex-parte decree came to be passed on 31.08.2005. The petitioner, thereafter, sought to execute the said decree by filing a petition in E.P.No.48 of 2017 seeking the arrest of the respondent. The petitioner had also adduced the means evidence in support of his case. In the affidavit filed in support of the execution proceedings, the petitioner would submit that the respondent was possessed of several movable and immovable properties and that he was earning a monthly salary of Rs.20,000/-. Therefore, he was a man of means, who has deliberately refusing to repay the loan amount.

6.The learned District Munsif, Thuraiyur, however, proceeded to dismiss the said petition on the ground that the petitioner had failed to establish the fact that the respondent was possessed of sufficient means despite which, he was not coming forward to clear the dues. Challenging this order, the petitioner is before this Court.

7.The learned counsel appearing on behalf of the petitioner would submit that the respondent was employed with the Lakshmi Vilas Bank as a Clerk and earning a monthly salary, though at present he has retired from service. He would submit that the learned District Munsif, Thuraiyur has overlooked the above fact. He would rely upon the judgment of the High Court of Andhra Pradesh at Amaravati in **Rajeti Prabhakara Rao vs. Mosa Satyavathi & Ors.** reported in **AIR 2019 AP 55** and would draw the attention of this Court to paragraphs 12 and 13 in support of his arguments.

8.Heard the learned counsels for the parties.

9.The petitioner has obtained an ex-parte decree for recovery of money on 31.08.2005. Admittedly, the decree has not been challenged by the respondent herein. Although the plaintiff has obtained a decree as early as in the year 2005, the plaintiff has filed the execution petition only on 21.08.2017, 10 days short of 12 years. The execution proceedings have been filed to arrest the respondent/judgment debtor in the event of his not paying the decree amount. The petitioner has filed an affidavit in lieu of his means evidence, but however, the contents of the statements made thereunder are not proved by any documentary evidence. The petitioner, who claims that the respondent was employed with the Lakshmi Vilas Bank and that he was possessed of sufficient movable and immovable property, had not produced any evidence to substantiate the same. Admittedly, the means evidence has been taken in the absence of the respondent/judgment debtor. The judgment relied on by the petitioner would only enure against him. In paragraph 14 of the said judgment, it has been held as follows:-



To

The District Munsif, Thuraiyur.

+1 CC to M/s.V.S. RISHIKESH, Advocate (SR-34525[F] dated 15/11/2021

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