

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED:03.11.2022****CORAM:****THE HONOURABLE Mr. JUSTICE S.SOUNTHAR**C.R.P.(NPD)No.3260 of 2022

C.Madeshwaran

...Petitioner

Versus

R.Prakash

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the CPC., praying to set aside the petition and order in E.P.No.46 of 2017 in O.S.No.21 of 2015, on the file of the Principal District Court, Krishnagiri, dated 03.07.2019.

For Petitioners :Ms.S.Uma Maheshwari

For Respondent :Mr.C.Jagadish

O R D E R

The Civil Revision Petition is filed challenging the order passed by the Court below, dismissing the execution application filed by the petitioner/decreed holder seeking execution of decree.



2. The petitioner obtained a money decree against the respondent and the same was put into execution in E.P.No.46 of 2017. The respondent herein filed a counter affidavit and opposed the execution application, on the ground that he filed I.P.No.1 of 2015 on the file of the Principal Subordinate Judge, Krishnagiri and the same was pending. The execution Court recording the said averments of the respondent dismissed the execution petition, on the ground that when Insolvency petition was already filed by the respondent, the petitioner cannot proceed with the execution of the money decree.

3. The learned counsel for the petitioner submitted that on the date when the impugned order was passed, there was no adjudication in insolvency proceedings and therefore, the properties of the judgment debtor never vested with the receiver. Therefore, the Court below ought not to have dismissed the execution petition merely on the ground that the respondent had filed a insolvency petition. The learned counsel also in support of her contention relied on the judgment of this Court, reported in (1971) 2 MLJ 252 in C.Ponnudurai, Official Receiver Vs.K.A.Kumaraswamy Mudaliar, wherein, this Court has held that merely



because insolvency petition is admitted by the insolvency Court, the executing Court need not terminate the execution petition. The relevant observation of this Court is as follows:

“It is true that according to Section 28(7) once an order of adjudication is made it will relate back to the date of filing of the petition, but that will not have the effect of nullifying the judicial orders made in execution of the decree against the judgment-debtor. Section 52 contemplates a situation that at the time of the execution sale of the insolvent's properties there has been a Receiver appointed by the Insolvency Court as a result of which the property had vested in him. Section 52 will have no application when a Receiver had not been appointed in respect of the insolvent's properties. So an executing Court while executing a decree passed against the insolvent need not stay its hands merely on the admission of an insolvency petition. This has been so held in Nagendra Lal v. Hemanta Kumar.”

4. The learned counsel for the respondent by drawing the attention of this Court to Section 20 of Provincial Insolvency Act submitted that the insolvency Court is empowered to appoint interim receiver even at the time of admission of the petition prior to the adjudication order and in that case, interim receiver is entitled to possession of the property of the



debtor and therefore, the Court is correct in terminating the E.P proceedings on the ground that the insolvency petition filed by the respondent was already admitted by the insolvency Court.

5. When the matter is taken up for hearing today, the learned counsel for the petitioner produced the copy of the order passed in insolvency petition filed by the respondent in I.P.No.1 of 2015 on the file of the Principal Subordinate Court, Krishnagiri, dated 05.03.2022. A perusal of the same would suggest that the insolvency petition filed by the respondent was dismissed for default on 05.03.2022.

6. Therefore, as on today, there is no insolvency petition filed by the respondent. It is also clear that even on the date on which the impugned order was passed, there was no appointment of interim receiver. Therefore, the Court below ought not to have terminated the E.P merely on the ground that insolvency petition filed by the respondent was pending on the date of passing of the impugned order.



7. Admittedly, as on today, the insolvency petition filed by the respondent is not available on file and therefore, there is no impediment for the petitioner to proceed with the execution of the decree he had obtained.

8. In view of the discussions above, I am inclined to interfere with the order passed by the Court below and accordingly, the order dated 03.07.2019 passed in E.P.No.46 of 2017 is set aside. The EP is restored to file and the Court below is directed to proceed with the E.P in accordance with law.

9. Accordingly, this Civil Revision Petition is allowed.

No costs.

03.11.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
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S.SOUNTHAR, J.

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To
The Principal District Court,
Krishnagiri.

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