



CRP.No. 402 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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and

CMP.No.3437 of 2021

Chinnapaiyan

.. Petitioner

Versus

1.M/s. Mahindra & Mahindra
Financial Service Limited
Represented by its Authorized Signatory
Mr.R. Suresh
Gateway Building Apollo Bunder
Mumbai-400 001.

2.Seenivasan

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 18.09.2020 passed in R.E.P.No. 23 of 2016 in A.O.P.No. 199082 of 2013 on the file of Principal Sub Court, Krishnagiri.

For Petitioner	: Mr.P.Mani
For Respondent-1	: Mr.A. Prabhakaran
For Respondent-2	: No Appearance

ORDER



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WEB COPY This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 18.09.2020 passed in R.E.P.No. 23 of 2016 in A.O.P.No.199082 of 2013 on the file of Principal Sub Court, Krishnagiri.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent and perused materials available on record.

3. None appeared on behalf of the second respondent in this case.

4. It is the case of the revision petitioner that the first respondent is the Non-Banking Finance Company, *inter-alia* carrying on business of extending financial assistance for the purchase of vehicle and equipment by providing loan against the security of such assets. The revision petitioner and the second respondent had approached the first respondent for financial assistance for the purchase of a vehicle, namely, Swaraj Tractor-735. On 31.03.2012, the first respondent lent a sum of Rs.4,03,000/- to the revision petitioner together with interest. The



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revision petitioner as well as the second respondent have also executed a promissory note in favour of the first respondent/Finance Company. The second respondent herein stood as a Guarantor. After obtaining the said vehicle loan, the revision petitioner had not paid the said loan amount. On 24.06.2013, the first respondent sent a recall notice to the revision petitioner as well as the second respondent calling upon them to re-pay the entire outstanding loan amount. After receiving the said notice, they have failed and neglected to repay the same. After due consideration of all the above facts and circumstances, the learned Arbitrator passed an Award for a sum of Rs.4,46,769/- together with interest at the rate of 3% per month from 05.08.2013 and they are jointly and severally liable to pay the said amount to the first respondent/Finance Company. Challenging the said Award, the first respondent has filed the petition in REP.No.23 of 2016 before the Principal District Judge, Krishnagiri District under Order 21 Rules 37 and 38 of CPC., seeking for arrest of the Judgment Debtors and the same was allowed by order dated 18.09.2020. Aggrieved by the said order, the petitioner has filed this Civil Revision Petition.

5. On a perusal of the records, it is seen that the revision petitioner



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had availed vehicle loan for a sum of Rs.4,03,000/- from the first respondent's Finance Company together with interest at the rate of 3% per month. The second respondent stood as a Guarantor. The revision petitioner and the second respondent had executed some loan documents, namely, Loan Agreement and Demand Promissory Note. Thereafter, the petitioner had not repaid the loan amount even after notice was served to the petitioner as well as the second respondent calling upon them to repay the same. Finally, the first respondent filed the petition in AOP.No.199082 of 2013 before the learned Arbitrator and the same was allowed on 24.11.2014 and they are jointly and severally liable to pay a sum of Rs.4,46,769/- to the first respondent along with interest at the rate of 3% per month from 05.08.2013 till the date of the award passed and with further interest at the rate of 18% per annum from the date of the award till the date of realization.

6. On a further perusal of the impugned order, it reveals that there was no proper enquiry and no reason was assigned by the Court below as to whether the petitioner absconded within the jurisdictional limits of the Court. When the petitioner is having no sufficient means, the Court



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below has come to the conclusion and passed an order for arrest of the Judgment Debtors who have not repaid the said loan amount. It is also seen that no notice was served to the revision petitioner on 12.07.2016. The Court below has observed that the revision petitioner and the second respondent have to pay the loan amount of Rs.4,46,613/- as per the Award passed by the learned Arbitrator, dated 24.11.2014 together with interest.

7. However, the learned Arbitrator has no jurisdiction for considering the same and the Award cannot be executed by the Executing Court and only an appeal can be considered by way of letting evidence through Mr.Suresh, Assistant Manager, stating that the revision petitioner is earning more than Rs.3,00,000/- per month and he has given only oral evidence. Although no other documents have been produced before the Executing Court, the second respondent's capacity/earnings have not been proved by the first respondent/Finance Company. When the revision petitioner has not given any proper evidence to prove his case in respect of the sources of income to re-pay the said vehicle loan amount as well as sufficient income earned by the petitioner, and has not



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been proved by the first respondent. Therefore, the Court below has erroneously partly allowed the said REP.No.23 of 2016, dated 18.09.2020 without giving any opportunity to the revision petitioner.

8. Mr.Suresh, Assistant Manager (Legal), who was examined as P.W.1 to prove the sources of income of the revision petitioner stating that the revision petitioner is earning Rs.3,00,000/- per month, by using his Tractor. The said oral evidence is not enough to prove that the revision petitioner is earning of the said amount Rs.3,00,000/-. Furthermore, no documentary evidence has been produced by the first respondent/Finance Company to show that the revision petitioner has sufficient means to re-pay the loan amount mentioned in the Execution Petition. But, the Court below has failed to analyze the matter in proper perspective and committed an error in arriving at a finding that the revision petitioner has not controverted the evidence of P.W.1. The said finding is unacceptable and it is the bounden duty of the first respondent to prove the sufficient means of the revision petitioner by way of documentary evidence. In the absence of any documents having been produced by the first respondent to prove the sources of income of the



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revision petitioner, mere oral evidence of P.W.1 cannot be accepted.

Therefore, this Court is of the considered view that the Court below has committed an error in ordering the arrest of the revision petitioner.

9. It is settled law that, before ordering the arrest of Judgment Debtors, the Executing Court shall hold an enquiry and give finding as to current financial position of Judgment Debtors to discharge decree before the order of arrest under Order 21 Rule 37 of CPC., and then the Executing Court should follow the procedures laid down in Rules 39 and 40 of CPC., Without conducting such enquiry and following such procedures the arrest of the Judgment Debtors will be bad in law. In the instant case, admittedly, no such enquiry was conducted. Therefore, the order of the Court below is liable to be interfered with. If the Executing Court has passed the order of arrest, it should find out the adequate reasons to pass such an order in writing after arriving full satisfaction with regard to the financial position of the Judgment Debtors.

10. For the reasons aforesaid, the Civil Revision Petition is



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allowed. The order dated 18.09.2020 passed in R.E.P.No. 23 of 2016 in A.O.P.No. 199082 of 2013 by the Principal Sub Court, Krishnagiri, is hereby set aside. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.12.2022

Speaking order / Non speaking order
Neutral citation : Yes/No
msm

To

1. The Principal Sub Court, Krishnagiri.
2. The Section Officer, V.R.Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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