

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.06.2022
PRONOUNCED ON : 04.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.NO.1071 OF 2020

Rajkumar ...Petitioner / Judgment Debtor /
Defendant

Vs

Appadurai ...Respondent / Decree Holder /
Plaintiff

Prayer: Civil Revision Petition is filed against the order, dated 05.02.2020, passed in E.P.No.665 of 2018 in O.S.No.163 of 2015 on the file of II Additional District Court, Puducherry.

For Petitioner : Mr.C.Sakthimanikandan

For Respondent : Mrs.Elizabeth Ravi

ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 05.02.2020, passed in E.P.No.665 of 2018 in O.S.No.163 of 2015 on the file of II Additional District Court, Puducherry, directing the revision petitioner to pay the E.P. amount or face arrest.

2. The suit was one for recovery of money and it was decreed by the trial Court in favour of the respondent/plaintiff and against the petitioner/defendant on 26.04.2018. Along with the suit, I.A.No.587 of 2015 was filed by the respondent/plaintiff to direct the petitioner/defendant to furnish security for the suit claim together with interest from the date of the plaint and costs to the tune of suit claim of Rs.7,96,849.50 and Court fee of Rs.59,763.50, totalling to a sum of Rs.8,56,613/- within a stipulated time and on failure to furnish the same, direct attachment of the property mentioned in the petition before judgment. The said application was allowed and the attachment of the property before judgment was ordered and the same made absolute. Pursuant to the decree passed in the suit, since the suit claim was not realized, the respondent/plaintiff filed E.P.No.665 of 2018 for arrest of the petitioner/defendant,

whereupon, the trial Court directed the petitioner to pay the decretal amount by 10.03.2020 or face arrest. Hence, this Revision.

3. Originally, as against the judgment and decree of the trial Court passed in the suit, the petitioner preferred an appeal vide A.S.No.598 of 2018 and, along with the said appeal, he also filed C.M.P.No.15576 of 2018 for interim stay. On 18.03.2019, this Court passed a conditional order of stay on condition that the petitioner should deposit 50% of the decretal amount and on further condition that failing to deposit the same would lead to dismissal of the petition without any further notice. However, the said amount has not been deposited by the petitioner. Therefore, no order of stay exists in the first appeal pending before this Court. Similarly, when this Civil Revision Petition came up before this Court for the first time on 11.03.2020, an order of interim stay of the impugned proceedings in E.P.No.665 of 2018 in O.S.No.163 of 2015 was passed for a period of four weeks, subject to the condition that the petitioner should pay a sum of Rs.1,50,000/- to the credit of the E.P., failing which, the said order would get vacated automatically without any further reference to the Court. Even the said order of this Court has not been complied with by the revision petitioner. Hence, virtually, no order of any interim stay exists in the impugned proceedings. The trial Court also observed that the petitioner possessed the property worth about Rs.60.00 lakhs. The lackadaisical attitude and dilatory tactics of the revision petitioner in not complying with the orders of the trial Court and also this Court would show the scant regard of the petitioner for the Court. If the petitioner were a law abiding citizen, to prove his bona fides, he ought to have complied with the interim orders of this Court either in the first appeal proceedings or even in this civil revision petition. Admittedly, the petitioner has not done that. This attitude of evasion cannot be sustained in the eye of law. Given that situation, filing or pendency of appeal is not a bar for the executing court to proceed with the execution petition so as to execute the decree of the trial Court.

4. It is also seen from the records that the petitioner is indebted to several persons, including the respondent, and, due to that, he has been making arrangements to encumber his share of the suit property with his co-sharers. Though the petitioner pleads that he has no sufficient means to comply with the decree, a perusal of Ex.P-1, sale deed executed in favour of the mother of the petitioner Rajeswari Ammal, followed by E.P-2, death certificate of his mother, would make it evident that the petitioner has sufficient means and the evidence of the respondent as P.W.1 in the execution petition would also go show that the petitioner possesses the undivided property worth more

than Rs.60.00 lakhs, in which, his share alone comes to Rs.20.00 lakhs, which fact is not denied by the petitioner as R.W.1. During the pendency of this petition, on 18.03.2022, a suggestion was also put to the petitioner for amicable settlement of the matter by mobilizing the funds through selling his 1/5 share to his co-sharers to avoid unnecessary complications. Even for that, no appropriate action or resolution was forthcoming from the petitioner.

5. It is an old saying that the difficulties of the litigant in India begin when he or she has obtained a decree. This evil was noticed as far back in 1872 by the Privy Council in relation to the difficulties faced by the decree holder in execution of the decree. Even after more than a century and a half, there has been no improvement and still the decree holder faces the same problem what was being faced in the past. A litigant coming to Court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he or she primarily wants from the Court of Justice is the relief and, if it is a money decree, he/she wants that money what he/she is entitled for in terms of the decree, and must be satisfied by the judgment debtor at the earliest without fail, keeping in view the reasonable restrictions/rights, which are available to the judgment debtor under the provisions of the statute or the Code, as the case may be.

6. In this case, the liability is not disputed by the petitioner. His only contention is that the suit property is under attachment and hence the respondent has to resort to realization of the amount through the execution of the said attachment. However, the stand of the respondent is that the suit property is an undivided property of the family and hence it is not feasible to execute the same and realize the amount. This Court finds substance in the argument of the respondent.

7. It is true, when the property is under attachment, the course left for the decree holder is to get the said property executed by way of sale through Court. However, as could be seen from the records, unfortunately, the property under attachment belongs to the mother of the petitioner and since his mother has died, the said property devolves on her legal heirs, who are five in number. As it has become arduous for the respondent to execute the said attachment and there is no possibility of immediate solution to the imbroglio, he has filed E.P.No.655 of 2018 for realization of the amount by way of arrest and detention of the petitioner in civil prison.

8. In this regard, it is useful to refer to Section 51 of the Code of Civil Procedure, 1908, which reads as under :

'Section 51. Powers of Court to enforce execution.-

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree -

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation. In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.'

From the above provision, it is clear that Court may, on the application of the decree-holder, order execution of the decree by arrest and detention of the judgment-debtor in prison as per clause (c). However, the proviso clause indicates that, where

the decree is for payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,- (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

9. Considering the present case on the touchstone of the above statutory provision, it is seen that the petitioner is indebted to several persons and is making arrangements to encumber his share of the property with the co-sharers, which would amount to commission of an act of bad faith in relation to his property, and, he, with the object of obstructing or delaying the execution of the decree, is likely to abscond or leave the local limits of the jurisdiction of the Court. The amount involved in this case being huge, amounting to Rs.10.00 lakhs and odd, coupled with the fact that the petitioner is indebted to several persons, as stated above, the act of absconding or leaving the local limits of the jurisdiction of the Court is an imminent possibility, as we see in many cases of this nature, to evade payment, so also arrest and detention. Therefore, this Court is satisfied with the above conditions stipulated in Section 51 of C.P.C. to execute the decree by arrest and detention of the petitioner, who is the judgment-debtor, in prison. The petitioner was put to notice and sufficient opportunity was also given to him in the execution petition before ordering arrest and detention. The said notice is also not necessary, as the Court is satisfied by affidavit, or otherwise, that with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court, as has been enunciated in the proviso under Order 21, Rule 37 of C.P.C.

10. Added to the above, it is significant to refer to Order 21 Rule 30 of the Code of Civil Procedure, 1908, which reads as follows :

O.21 R.30 : Decree for payment of money.
Every decree for the payment of money, including a

decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

This provision is unfettered to execute the decree for payment of money, including a decree for the payment of money as the alternative to some other relief, by detention of the judgment-debtor in the civil prison, or by the attachment and sale of his property, or by both.

11. Therefore, seeking of arrest and detention of the petitioner-judgment debtor in civil prison is one of the legal courses available to the respondent-decree holder and the same is well in accordance with law.

12. Since the decree is for payment of a sum exceeding Rs.5,000/-, as per Section 58 (1) (a) of C.P.C., the period of detention shall be for a period of three months. The petitioner-judgment debtor, on being released from detention after three months, shall not merely by reason of release be discharged from his debt, and his liability continues until the same is discharged in accordance with law.

13. Since the petitioner has shown scant regard for the orders of both the trial Court and also this Court, though this Court is inclined to order immediate arrest and detention of the petitioner in civil prison, before so doing, with a humanitarian view, by way of final opportunity to avoid arrest and detention, the petitioner is directed to pay the decretal amount by 31.07.2022. In case he fails to pay the amount by the said date, the trial Court is directed to secure custody of the petitioner through local police and detain him in civil prison for the period so mentioned in the foregoing paragraph. The respondent shall also be at liberty to proceed further with the execution proceedings for realization of the amount in accordance with law.

14. Civil Revision Petition is dismissed accordingly. No costs. Consequently, the connected C.M.P.No.5846 of 2020 is also dismissed.

Sd/-
Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

dixit

To

II Additional District Judge,
Puducherry.

+1cc to Mr.C.Sakthimanikandan, Advocate Sr.No.42394

+1cc to the M/s.Elizabeth Ravi, Advocate Sr.No.42488

C.R.P. No.1071/2020

GJ(CO)
RVM(19/07/2022)