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C.R.P. No.1290 of 2020 & C.M.P. No.7083 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP No.1290 of 2020
&
C.M.P. No.7083 of 2020

R. Senthil

... Petitioner

Vs.

India Bulls Housing Finance Ltd.
Registered Office at M-62-63, 1st floor
Connaught Place
New Delhi 110 001
Rep. by its Assistant Manager/
authorised signatory N.Subramanian
Respondent

...

Prayer: Civil Revision Petition filed under Section 115 CPC against the fair and decreetal orders dated 08.01.2019 passed in R.E.P. No.116 of 2018 in Arbitration Case No.2887 of 2012 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Mr.N. Suresh

For Respondent : Mr. S. Bruno Cruz



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ORDER

This Civil Revision Petition is filed against the fair and decreetal orders dated 08.01.2019 passed in R.E.P. No.116 of 2018 in Arbitration Case No.2887 of 2012 on the file of the Sessions (Fast Track Mahila) Court, Namakkal.

2. The present revision petitioner is the judgment-debtor in Arbitration Case No.2887 of 2012. The respondent, India Bulls Housing Finance Ltd., represented by its Assistant Manager/authorised signatory Mr. N.Subramanian, filed a petition in R.E.P. No.116/18 before the Sessions (Fast Track Mahila) Court, Namakkal, under Order XXI Rules 11(2), 37, 38, and Section 55 CPC r/w Section 36 of the Arbitration and conciliation Act, 1996, seeking for a direction to arrest the revision petitioner herein in order to realise the award amount passed in Arbitration Case No.2887 of 2012. The executing Court passed an order on 08.01.2019, directing the arrest of the revision petitioner by 05.02.2019. Aggrieved over which, the present Civil Revision Petition is filed.



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3. Heard Mr.N. Suresh, the learned counsel appearing for the revision petitioner and Mr. S. Bruno Cruz, learned counsel appearing for the respondent.

4. The learned counsel for the revision petitioner would contend that the executing Court even without conducting any enquiry in R.E.P.No.116/2018 has passed a cryptic order and therefore, the same is liable to set aside. He also relied on the decision in ***Subramanya Gounder vs. Perumalammal*** reported in ***2007 4 MLJ 220*** wherein it has been held that where a judgment-debtor is sought to be arrested for non-payment of a decree debt, enquiry should be held by the executing court to ascertain the means of the judgment-debtor and the Court's satisfaction that judgment-debtor has got means and he has been refusing or neglecting to pay the same, should be recorded.

5. Per contra, the learned counsel for the respondent contended that the executing court actually conducted enquiry and he also produced the on-line status of e-court services wherein it is shown that the



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Execution Petition was posted for enquiry on 08.11.2018, 29.11.2018 and 20.12.2018 and subsequently it was reserved for orders.

6. A cursory look of the case status report clearly shows that nobody was examined on the side of the decree holder to prove that the present revision petitioner possessed sufficient means and that he has been refusing or neglecting to pay the same. In this circumstance, the order passed by the trial court is set aside and the matter is remitted back to the Sessions (Fast Track Mahila) Court, Namakkal, to conduct proper enquiry in accordance with law.

7. In the result,

- i. the revision petition is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the fair and decreetal orders dated 08.01.2019 passed in R.E.P. No.116 of 2018 in Arbitration Case No.2887 of 2012 on the file of the Sessions (Fast Track Mahila) Court, Namakkal, is set aside.



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iii. The R.E.P. No.116 of 2018 is remitted back to the Sessions (Fast Track Mahila) Court, Namakkal, to conduct enquiry affording opportunity to both parties in accordance with law.

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Index : Yes/No

Internet : Yes/No

Speaking/non speaking
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R.HEMALATHA, J.,

bga

To,

The Sessions (Fast Track Mahila) Judge, Namakkal.

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&

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16.11.2022