



A.Nos.4228 & 4229 of 2021 and
A.No.1333 of 2022 in E.P.No.56 of 2019

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P.VELMURUGAN, J.

The judgment debtors have filed the application in A.No.4228 of 2021 challenging the order of arrest of the learned Master passed in E.P.No.56 of 2019 dated 12.11.2021. The respondent is the decree holder, who got the Arbitration Award in his favour.

2 Learned counsel appearing for the judgment debtors contended that they have disclosed all their assets and stated that they have no other means to discharge the liability. In spite of adducing evidence to that effect, the learned Master instead of passing an order of attachment of the properties of the judgment debtors, has erroneously passed the present impugned order of arrest. Further, to enforce the Arbitration Award, one cannot initiate execution proceedings. The learned counsel further contended that some of the assets were mortgaged and the value of the assets disclosed by the judgment debtors would suffice to discharge the debts of the secured creditors and the decree holder. The learned Master should have brought the assets for auction and through the sale proceeds the debts can be adjusted, but, instead, the Master passed the order of arrest, which is erroneous and liable to be



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dismissed.

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3 Per contra, the learned counsel appearing for the respondent/decree holder contended that despite having sufficient means and the demand made by the decree holder, the applicants/judgment debtors have failed to discharge their liability. Therefore the decree holder has initiated execution proceedings and the learned Master has also rightly passed the order of arrest, which is well founded and reasoned and the same does not call for any interference of this Court.

4 Heard the learned counsel on either side and carefully perused the materials available on record.

5 Now this Court has to decide whether the Master is right in passing the order of arrest in the execution proceedings initiated by the decree holder.

6 It is seen that the applicants/judgment debtors had not pleaded no means, instead they admitted that they owned properties, which value is more than the mortgaged amount and the debts due to the decree holder. Even though one of the judgment debtors pleaded no means, it is only an after thought, as rightly observed by the learned Master, since they did not plead



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the same in the counter.

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7 Pending the above applications, part payment was made by the applicants/judgment debtors as directed by this Court, but not paid the entire debt. The learned Master in his order has observed that when the Court directed the applicants/judgment debtor to deposit Rs.25,00,000/- as a condition to prefer appeal, immediately a cash was deposited by the judgment debtors, which shows that despite having sufficient capacity to mobilize fund to pay the decretal amount due to the decree holder, they evaded the payment and not obeyed the order of the Court.

8 From the evidence adduced by the judgment debtors before the Master, the Master has arrived at a concrete conclusion that the applicants/judgment debtors suppressing the real facts. Therefore once the applicants admitted their liability and also admitted that they have immovable properties, which values more than the debts, they should have paid the decretal amount before initiating the execution proceedings by the decree holder. Now they cannot take a stand that the Master would have ordered for attachment and bring the assets for auction instead of ordering arrest.

9 In view of the above observations, this Court does not find any illegality or infirmity in the order of arrest passed by the learned Master,



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which according to this Court, is well founded and reasoned.

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10 Accordingly, the application in A.No.4228 of 2021 is dismissed and consequently connected applications are closed. However, the learned counsel appearing for the applicants/judgment debtors seeks some time to make payment. In order to give an opportunity to the judgment debtors, time is granted for a period of four weeks from today i.e. 24.03.2022 and if the judgment debtors failed to make the payment, the respondent/decreed holder is at liberty to initiate steps to realize the decretal amount in the manner known to law.

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