



C.R.P.No.3605 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P.No.3605 of 2022 and
C.M.P. No.19139 of 2022

R.Sudarshan

... Petitioner

..Vs..

A.Nataraj

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order and decretal order dated 05.09.2022 made in E.P. No.85 of 2020 in O.S. No.274 of 2017 on the file of the Court of the Subordinate Judge, Pollachi.

For Petitioner : Mr.T.M.Naveen

ORDER

The revision petitioner is the judgment debtor in E.P. No.85 of 2020 in O.S. No.274 of 2017 on the file of the Sub Court, Pollachi.

2.The respondent/decreed holder filed a petition under Order 21 Rule 11(2) of the Code of Civil Procedure for detaining the judgment debtor in the civil prison.

3.The Suit in O.S. No.274 of 2017 was filed by the decree



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holder claiming maintenance from the defendant/judgment debtor.

The Suit was decreed on 24.09.2020 granting maintenance of a sum of Rs.25,000/- till the life time of the decree holder and the balance maintenance amount of Rs.6,00,000/- should be paid by the judgment debtor within a period of one month. The decree holder filed E.P. No.85 of 2020 on the file of the Sub Court, Pollachi under Order 21 Rule 11(2) of C.P.C. The judgment debtor filed a counter contending that there is no income for him to pay the maintenance.

4.It is pertinent to mention that the Appeal in A.S. No.45 of 2020 preferred by the judgment debtor is pending before the V Additional District Court, Coimbatore. Since no order of stay was granted, the learned Executing Court vide its order dated 05.09.2022 allowed the Execution Petition by observing thus:

'3.The respondent has denied the petition contending that there is no income source for the respondent to pay the maintenance and preferred A.S. No.45/2020 before the 5th Additional District Court, Coimbatore and the same is pending.

4.There is no stay produced by the respondent from the Appellate Court and hence the judgment and decree of this Court stands good. Even after two years of filing of the EP the respondent not come forward to pay the maintenance amount when the decree holder is aged about 76 years at the time of filing of the EP.



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Considering the nature of the suit and the age of the petitioner/ decree holder, this Court is of the considered opinion that the respondent should not sent to civil prison for recovery of the maintenance amount.'

5.Learned counsel for the revision petitioner relied on the decision in Arumugham vs. Muthukumaraswami reported in 2014-1-L.W. 542 and contended that the Executing Court is wrong in not recording a finding as to the grounds on which it came to the conclusion that the judgment debtor was liable to be arrested and sent to the Civil Prison. He would further contend that the Court below proceeded further to state that so long as the decree amount is not paid, he is liable to be arrested and detained in Civil Prison.

6.In the decision in Arumugham vs. Muthukumaraswami cited above, the judgment debtor was unable to pay the decree amount. In the said circumstances, it was held that the Executing Court did not record the reasons on which it came to the conclusion that the judgment debtor was liable to be arrested and sent to civil prison. The facts of the above case would not apply to the present case. In the instant case, a decree for maintenance is passed by the Trial Court after considering the merits of the case. Hence, this Civil



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R.HEMALATHA, J.

vga

Revision Petition is dismissed. Consequently, connected M.P. is closed. No costs.

14.11.2022

Index : Yes/No
vga

To

1. The Subordinate Judge, Pollachi.
2. The Section Officer,
V.R. Section, High Court, Madras.

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