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C.R.P.(NPD)No.3545 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.R.P.(NPD)No.3545 of 2019
and C.M.P.No.23256 of 2019

Jayachandran

... Petitioner

Vs.

Karuppa Padayachi

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, as against the fair and decreetal order dated 20.04.2018 passed in E.P.No.76 of 2013 in O.S.No.261 of 2004 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioner : Mr.D.Murugan

For Respondent : Mr.A.G.Rajan

ORDER

This revision is filed challenging the order of the Execution Court in E.P.No.76 of 2013, which the plaintiff / Decree Holder had filed for



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executing a money decree in O.S.No.261 of 2004. The E.P is laid for arrest and detention of the revision petitioner herein and the sum sought to be recovered under the E.P is Rs.1,04,982/-.

2.1 In the E.P, the Judgement Debtor had taken out a plea that during the pendency of the E.P, on 09.03.2017, he had paid Rs.82,000/- in full and final settlement in a panchayat and produced a receipt before the Court. In his counter affidavit, the Decree Holder had denied the aforesaid fact and has averred that in E.P.No.76 of 2013, the revision petitioner / Judgement Debtor had obtained repeated adjournments till 15.03.2017, for filing his counter and it is in this backdrop, the Judgement Debtor had fabricated a receipt dated 09.03.2017. Indeed, this receipt falls between 08.03.2017 and 11.03.2017. On both the dates, the E.P was posted before the Court.

2.2 The matter was enquired by the Execution Court, and it disbelieved the same. This is now under challenge in this revision.



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3. Heard the learned counsel for the revision petitioner who submitted that the trial Court in fitness of things ought to have ensured that a show cause notice is first issued to the Judgement Debtor before any warrant of arrest is issued.

4. It is not a case where the Court proceeded to order arrest of the Judgement Debtor on mere filing of the E.P, but has issued notice on the E.P, invited the objection of the Judgement Debtor, granted nearly four years for him to come out with his objections and then proceeded to enquire the line of defence he had taken in the Execution Petition, before rejecting the said defence.

5. Here is a situation where the plaintiff had laid a suit for recovery of money in 2004, which ended in his favour. The defendant had preferred a First Appeal rather unsuccessfully and also a Second Appeal again without any success. After this ordeal, the plaintiff had filed E.P.No.76 of 2013, and again the defendant had tested the patience of the legal system before coming out with his line of defence that he had settled the decretal claim outside the Court. Given the kind of acrimony that this suit has generated over the years,



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it is unbelievable that there could be an out of Court settlement whether the

E.P is pending. This is fortified by the following circumstance:

The E.P was posted on 08.03.2017 for filing the counter, from which date the case was adjourned to 11.03.2017. The alleged payment of Rs.82,000/- comes in between these two days, to be precise on 09.03.2017. If only the amount had been paid on 09.03.2017, on 11.03.2017, when the E.P was posted, this fact could have been presented before the Court but time was sought on 11.03.2017, and the case was taken up on 15.03.2017. It is thereafter, the counter comes before the Court with this receipt.

6.This Court appreciates the confidence of the Judgement Debtor that his stories of fables would be believed by the Court. This Court does not find any merit in the present C.R.P and the same is liable to be dismissed.

7.Turning to the other aspect which the learned counsel has raised vis-a-vis



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the procedure contemplated under Order 21 Rule 37 C.P.C., as already indicated, the Execution Court has not rushed to pass an order of arrest but gave him ample opportunity to defend his cause. So far as detention is concerned, the very fact the defendant / Judgement Debtor says that he had Rs.82,000/- to pay, it indicates that he has adequate means to pay the decretal claim but he has taken a principal position not to pay it. This Court, therefore, is satisfied that the Judgement Debtor has ample means to pay but he has refused to pay it.

8.This Court understands that the Judgment Debtor has deposited Rs.25,000/. The revision petitioner is now given a bare 15 days time from today to pay the balance amount stated in execution proceedings, failing which the Execution Court may proceed to execute the order that it has passed.

N.SESHASAYEE, J.

Anu



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9. This Civil Revision Petition stands dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

06.06.2023

Anu

Index : yes / no

Internet : yes / no

Speaking / Non Speaking order

To.

The Principal District Munsif Court, Kallakurichi

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