



C.R.P.No.853 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 16.03.2023

Delivered on 28.04.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.853 of 2020
and C.M.P.No.4537 of 2020

C.R.Pugalendhi

...Respondent/Defendant/Petitioner

-Vs-

Anbazhagan

...Petitioner/Plaintiff/Respondent

Prayer:- Civil Revision Petition filed under Section 115 of CPC., to set aside the fair and decretal order dated 14.02.2020 in E.P.No.55 of 2018 in O.S.No.361 of 2018 on the file of the learned Subordinate Judge, Jayamkondam.

For Petitioner : Mr.N.Loganathan
for Mr.R.Valliappan

For Respondent : Mr.S.Vijaya Kumar
Senior Counsel
for Mr.G.Bharadwaj



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ORDER

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This Civil Revision Petition is filed to set aside the fair and decretal order dated 14.02.2020 in E.P.No.55 of 2018 in O.S.No.361 of 2018 on the file of the learned Subordinate Judge, Jayamkondam.

2.When the case came up for hearing on 09.03.2023, the learned Counsel attached to the Office of the Counsel on record seeks time to get instructions from his client and also he submits that already the Revision Petitioner deposited a sum of Rs.2,00,000/- before the Court towards the Execution Petition and Rs.1,00,000/- at the time of admission of this Civil Revision Petition.

3.The learned Senior Counsel for the Respondent Thiru.S.Vijaya Kumar also present in Court. He invited the attention of this Court, to the order passed by the learned Executing Court Judge in E.P.No.55 of 2018 in O.S.No.361 of 2017 dated 14.02.2020. The learned Senior Counsel for the Respondent/Decree Holder invited the attention of this Court to the finding of the learned Sub Judge, Jayamkomdam as Executing Court regarding the means of the Judgment Debtor. The Execution Petition was



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filed for arrest of the Judgment Debtor. In the counter, the Judgment Debtor had stated that he has no means. Therefore, the evidence was recorded. Based on the evidence, and on appreciation of evidence, the learned Sub Judge, Jayamkondam in E.P.No.55 of 2018 had found out that the Judgment Debtor has the means to pay the Decree Holder but wantonly evading to pay the dues. Therefore, he ordered arrest of the Judgment Debtor/Revision Petitioner. After filing the Execution Petition in the year 2017, the Judgment Debtor/Revision Petitioner has succeeded in protracting and delaying the Execution proceedings. Therefore, the learned Counsel for the Revision Petitioner is directed to pay the balance amount by 16.03.2023, failing which orders will be passed.

4.Today, [16.03.2023] when the case came up for hearing, the learned Counsel for the Revision Petitioner submitted that the Executing Court had not conducted an enquiry regarding the means of the Judgment Debtor as per Order XXI Rule 40 of C.P.C. Therefore, the order passed by the learned Subordinate Judge, Jayamkondam, in E.P.No.55 of 2018 in O.S.No.361 of 2017 dated 14.02.2020 is perverse, and is to be set aside cannot be accepted, pursuant to the order passed by the learned



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Subordinate Judge, Jayamkondam.

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5.As per Order XXI Rule 40 of C.P.C before proceeding with execution of attachment of the property, the Executing Court should exhaust the remedy available with the provision of arresting the Judgment Debtor. Only after the arrest of the Judgment Debtor is exhausted at the 2nd stage, the Executing Court shall proceed with the attachment and sale of the property. The Executing Court shall not proceed directly with the execution of the decree by invoking the power to attach the property and bring it to sale. Under those circumstances, the enquiry conducted by the learned Subordinate Judge, Jayamkondam, is found to be reasonable and acceptable.

6.The Decree Holder in Execution Petition in E.P.No.55 of 2018 had filed an affidavit as the Examination-in-Chief of P.W.1, regarding the means available to the Respondent/Judgment Debtor to repay the debt, wantonly if the Judgment Debtor evades repayment of the debt, only then the arrest can be ordered. Here, in this case, the Decree Holder had in his evidence clearly stated that the Judgment Debtor had sold the oil mill for a



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considerable amount of Rs. Rs.2 crores and odd, after institution of the suit and before filing of the Execution Petition. Therefore, he has the means to pay the amount to the Decree Holder. The Judgment Debtor had examined himself as R.W.1. During the cross examination of R.W.I by the learned Counsel for the Decree Holder, the Judgment Debtor as Respondent witness, admitted that he had sold the oil mill and he had spent Rs.75,000/- for digging the bore well. His son had purchased the car on 02.09.2016. Under those circumstances, the learned Subordinate Judge, Jayamkondam, had arrived at the conclusion that the Judgment Debtor had sufficient means to satisfy the decree amount, whereas he had wantonly evaded the due process. Therefore, the arrest of the Judgment Debtor was ordered. At that stage only, the Judgment Debtor had approached this Court, seeking to set aside the order passed by the learned Subordinate Judge, Jayamkondam.

7.In support of his contention, the learned Counsel for the Revision Petitioner relied upon the following rulings:-

- i. In the case of **Ramasamy Vs. Pushpa**, reported in **2017 (2) MWN (Civil) 457**.



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ii. In the case of *Selvaraj and Others Vs. Sumathi*, reported in 2021

(3) CTC 474.

iii. In the case of *Mathura Prasad Sharma Vs. Parmeshthi Das*, reported in *MANU/UP/0115/1971*.

8. Even though arrest is ordered, it is the practice in the Executing Court throughout Tamil Nadu to follow the circulars of the High Court regarding arrest. If the Judgment Debtor is arrested and brought to the Executing Court, he will be examined by the learned Judge concerned. The Executing Judge shall enquire the Judgment Debtor. If the Judgment Debtor refuses to satisfy the decree, then the Executing Court detains him in the Court itself for three days. For these three days, his food expenses had to be met by the Decree Holder by paying a subsistence allowance. For the arrest of the Judgment Debtor, the Decree Holder fails to pay the subsistence allowance along with the batta for ordering security in the Court for the Judgment Debtor, the Judgment Debtor will be released and the Execution Petition will be closed. Even after three days, if the Judgment Debtor does not pay the decree amount or part of the decree amount, he will be sent to the Civil Prison. As far as Tamil Nadu is



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concerned, the Civil Prison is at Trichy. Therefore, the Decree Holder has to pay the necessary expenses for taking the Judgment Debtor to Civil Prison at Trichy. He has to pay this within the third day before the third day expires. Therefore, the submission of the learned Counsel for the Revision Petitioner that the learned Sub Judge had not followed the due procedure, cannot at all be accepted. Arresting the Judgment Debtor is an order passed by the learned Judge as per the provisions of CPC. Therefore, nothing is illegal. The Judgment Debtor had been granted the opportunity to be heard. During the enquiry, he himself had deposed evidence. He was cross examined by the Decree Holder. In the cross examination, the Judgment Debtor admitted the contention of the Decree Holder, that he had sold the oil mill for Rs.2 crores and odd. He had sold it before the filing of the Execution Petition in E.P.No.55 of 2018 and after filing of the suit in O.S.No.361 of 2017, which was pending against him. Therefore, he was aware that after selling the property he has means to settle the dues. Therefore, the learned Judge had arrived at the conclusion that the Judgment Debtor had wantonly avoided payment of the decree amount. Under those circumstances, the Executing Court has to necessarily issue a warrant to arrest the Judgment Debtor. This is not based on the whims and



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fancies of the learned Judge concerned. It is based on the rules of CPC under Order XXI Rule 40 and the guidelines issued by the High Court regarding arrest of the Judgment Debtor. Therefore, the ruling placed by the learned Counsel for the Revision Petitioner in the case of ***Selvaraj and Others Vs. Sumathi***, reported in ***2021 (3) CTC 474***, does not hold good and is not applicable to the facts of this case. In the above stated circumstances, it is rejected.

9.The learned Executing Judge had conducted an enquiry based on the adducing of evidence by the Decree Holder and the Judgment Debtor and on the basis of the available material, he had arrived at the conclusion that the Judgment debtor has the means to satisfy the decree but has wantonly avoided the same. Therefore, an arrest of the Judgment Debtor was ordered.

10.The observation of the learned Judge of Allahabad High Court in the case of ***Mathura Prasad Sharma Vs. Parmeshthi Das***, stated as follows:



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“4. There is, in my view, one further defect in the verdict of the lower appellate court. As is the practice in England, on which the scheme of Civil Procedure Code is based, that before sending a judgment-debtor to a prison an opportunity should be offered to him to pay up the decree by suitable instalments. The Civil Procedure Code empowers an executing court to fix instalments, If the learned Judge thought that the judgment-debtor had accumulated cash which he was concealing, he may have taken recourse to the provisions of Sub-rule (3) of Rule 40 of Order XXI of the C. P. Code instead of sending him to jail direct. Further the learned Judge of the lower appellate court ought to have taken due notice of the hurry and speed taken recourse to by the decree-holder, he having applied for execution of the decree for realisation of the money by arrest of the judgment-debtor within ten days of the passing of the decree. Even if under the circumstances, the judgment-debtor intended to pay off the decree, the decree-holder did not give him sufficient opportunity and rushed to the court for orders of a most drastic nature and the court readily accepted the prayer. A court must always be hesitant to send a judgment-debtor to prison unless it were found that the judgment-debtor had been always dishonest, contumacious and deliberate in his conduct in avoiding the decree passed against him. In the instant case, I do not find any such evidence on the record.”



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11. Therefore, the ruling cited will not hold good. Here, in this case, after filing of the Civil Revision Petition, the learned Single Judge of this Court on admission of the Civil Revision Petition granted a stay on condition that the Petitioner shall deposit Rs.1 lakh before the Executing Court. Accordingly, he had paid Rs.1 lakh. Already, he had deposited Rs.2 lakhs before the Court concerned. Therefore, the ruling that the Judgment Debtor is to be granted time to pay in installments will not hold good in this case as the Judgment Debtor was making a plea that he does not have any means to pay the decree.

12. The person, who makes the claims does not have the means to pay the decree, in the cross examination, admitted that he had sold oil mill. He admitted that his son had purchased a new car. Under those circumstances, selling an oil mill after institution of the suit and before filing Execution Petition is a way of evading the means. If he had immovable property, he could only be arrested. If he had immovable property only subsequent to the order of arrest, the property will be brought to sale, he had cleverly evaded such proceedings. Therefore, as stated in the reported rulings, there was sufficient evidence before the



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Executing Court that this is the case where the Judgment Debtor wantonly evades paying back the decree amount. Only if there is wanton evasion to pay decree amount, the arrest is ordered. Therefore, the ruling of the Allahabad High Court on which reliance was placed by the learned Counsel for the Revision Petitioner is found not applicable to Courts in Tamil Nadu which are issued with the circulars from the High Court regarding procedures to be followed in execution of the arrest and detention of the Judgment Debtor. The rulings quoted by the learned counsel for the Revision Petitioner placing reliance on **2017 (2) MWN (Civil) 457** will not be applicable to the facts of the case, as the learned Executing Court Judge had found out that the Revision Petitioner as Judgment Debtor had wantonly evaded the payment of the decree amount. Therefore, the rulings of the learned Single Judge of this Court that no person shall be imprisoned merely on the ground of inability to fulfill a contractual obligation will not hold good.

13. Here is the case where the Judgment Debtor in his evidence before the Executing Court had admitted that he had sold an oil mill for Rs. Rs.2 crores and odd, this was considered to be only to evade the



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repayment of the decree amount. Therefore, the Civil Revision Petition has to fail.

14.In the result, **the Civil Revision Petition is dismissed** as not maintainable. The Executing Court shall pass appropriate orders by following the procedure under Order XXI, Rule 40 of CPC and the circulars of the Hon'ble High Court of Madras regarding execution of the arrest. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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To

The Subordinate Judge, Jayamkondam.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

**Order made in
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