



C.R.P. No. 798 of 2023

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T.V.THAMILSELVI, J.

This matter is taken up for hearing under the caption “For Being Mentioned” today at the instance of the learned counsel for the revision petitioners.

2. The learned counsel for Revision Petitioners would submit that this Court by an order dated 28.03.2023 dismissed the above C.R.P.. However, the learned counsel would submit that in the order, liberty is not granted to the revision petitioners to file an affidavit before the trial court. Accordingly, the matter is listed today.

3. Heard the contentions of learned counsel for revision petitioners and perused the order.

4. Considering his submissions, at the end of para 8 of the order, it shall be added as follows :-



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“Liberty is granted to the Revision Petitioners to file an affidavit before the trial court.”

5. Registry is directed to incorporate above correction in the Order of this Court in C.R.P.No. 798 of 2023 dated 28.03.2023 and issue fresh order copy to the Revision Petitioners.

12.06.2023

rpp



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12.06.2023



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C.R.P. No. 798 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.798 of 2023

and

CMP.No.6106 of 2023

1. Jothi Prakasam
2. Dhamarai

... Petitioners

/Vs/

1. Krishnaraj
 2. Yuvaraj
 3. Senguntha Marabinal of Kamatchiammanpet,
Gudiyatham, Represented by Secretary Margabandhu,
 4. Murugan, Treasurer
- ... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, prayed to allow the Civil Revision Petition and to set aside the order dated 22.03.2021 made in EP.No.27 of 2021 in OS.No.32 of 2008 on the file of the learned Subordinate Judge, Gudiyatham, Vellore District.

For Petitioners

: Mr.V.Perumal



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ORDER

This petition has been filed to set aside the order dated 22.03.2021 made in EP.No.27 of 2021 in OS.No.32 of 2008 on the file of the learned Subordinate Judge, Gudiyatham, Vellore District.

2. Challenging the impugned order passed in EP.No.27 of 2021 in OS.No.32 of 2008 on the file of the learned Subordinate Judge, Gudiyatham, Vellore District, the defendants 3 and 4 /judgment debtors have preferred this revision.

3. The learned counsel for the revision petitioners would argue that before the Executing Court, the decree holders had not produced sufficient evidence to show that the Revision Petitioners are having sufficient means, and that the Executing Court, without considering the same ordered arrest and therefore prayed to set aside the impugned order.

4. To support his contentions, he relied on the preposition laid by the *Hon'ble Supreme Court* in the case of *Jolly George Varghese and another vs/ The Bank of Cochin* reported in *AIR 1980 Supreme Court 470*, the relevant portion of which is extracted here under :



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“ (A) Civil P.C (5 of 1908), S.51, O.21 R.37 read

with -Arrest and detention in Civil Prison-Judgment-debtor subsequent to the date of decree having no means to pay-Absence of mala fides and dishonesty-Arrest and detention is violative of Art. 11 of International Covenant on Civil and Political Rights and Art.21 of Constitution of India”.

5. He also relied on the preposition laid by the **Hon'ble Madras High Court** in the case of **P.Azeez Ahmed /vs/ State Bank of India, Vaniyambadi** reported in **AIR 1995 Madras 104**, the relevant portion of which is extracted here under :

“ (A) Civil P.C (5 of 1908), S.51- Execution of decree-Arrest of judgment-debtor-Ex parte order-Validity-Mere affidavit of decree holder without any other documentary or oral evidence-Not sufficient to hold that judgment -debtor has means to pay decree amount-such exparte order, not sustainable”.

6. The above two judgments are not applicable to the facts of the present case for the reason that in the counter statement filed by the Judgment Debtor, he himself has admitted that he had retired from the Co-opertive Department, but had not produced any document to show



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that he had no means and that the fourth respondent, a daily labour, he had also not adduced any evidence to show that he had no means. The mere statement that he has no movable or immovable property is not sufficient as the law requires that sufficient materials have to be adduced to show that he is the person of no means. No such evidence was produced before the Executing court.

7. The Executing Court after considering the affidavit filed by the decree holders, rightly ordered arrest, since the suit is pending from the year of 2008 and the appeal filed by the petitioners is at the stage of arguments from the year of 2008 which would show that the petitioners intend to drag on the proceedings. Hence, this revision is liable to be dismissed.

8. Accordingly, this Civil Revision Petition is dismissed as no merits. No costs. Consequently, connected misceallenous petitions are closed.

28.03.2023

Vv
To

1. The Principal District Court,
Dharmapuri.



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T.V.THAMILSELVI, J.

Vv

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and
CMP.No.6106 of 2023**

28.03.2023