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CRP.No.122 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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M.Govindasamy

... petitioner

Vs.

R.Murugan

... Respondent

PRAYER:

Civil Revision Petition filed under Section 115 of CPC to set aside the order of arrest of the petitioner / judgment debtor to civil prison as per the order passed in the above REP.No.83 of 2010 in OS.No.67 of 2006 on the file of the learned Subordinate Judge, Dharmapuri as erroneous and illegal and to record the payment of the entire decree amount as out of court settlement.

For Petitioner : Mr.A.E.Ravichandran

For Respondent : Mr.Deeraj
for M/s.PV.Law Associates

ORDER

This civil revision petition has been filed to set aside the order of arrest of the petitioner / judgment debtor to civil prison as per the order passed in the above REP.No.83 of 2010 in OS.No.67 of 2006 on the file of the learned Subordinate Judge, Dharmapuri, thereby ordered for payment of decree amount, failing which arrest to be made.



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2. The petitioner is the judgment debtor in the suit filed by the respondent for recovery of money. The suit was decreed and in pursuant to the decree passed in OS.No.67 of 2006, the respondent filed EP for issuance of notice under Order 21 Rule 37 of CPC and on failing to pay the decree amount, to issue warrant of arrest.

3. The learned counsel for the petitioner would submit that Order 21 Rule 37 of CPC was not complied with and no notice was issued to the petitioner and no witness was examined as against the petitioner before ordering arrest.

4. The learned counsel for the respondent would submit that the petitioner played fraud in the execution court and the petitioner had taken a specific stand that he had already paid. However, he failed to establish the same. Therefore, he played fraud and the execution court rightly issued arrest warrant if not settling the amount.

5. The only point for consideration is that whether the provision under Order 21 Rule 37 of CPC has been complied with or not?



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6. On perusal of records, execution court issued notice under Order 21

Rule 37 of CPC without examining any witness by the respondent herein and ordered for payment of amount, failing which order for arrest to be made. In this regard, the learned counsel for the petitioner relied upon the judgment of this Court in the case of *A.Nanjundan Vs. Alamelu* reported in **2010-1-LW 618**, in which this Court held that execution court recorded a factual finding that the revision petitioner has denied the means to pay the decree amount. However, the court shifted the burden on the revision petitioner to prove that he has no means. It is not correct in shifting the burden on the judgment debtor to prove the negative. Order 21 Rule 37 of CPC provides for arrest and detention of the judgment debtor in civil prison, in case it was found that money decree against him was not satisfied. It gives a discretionary power to execution court to issue notice to the judgment debtor to show cause as to why he should not be detained in civil prison. Such notice should indicate that the judgment debtor has to pay the amount as shown in the execution petition and in case of his default in making payment, he has to show cause as to why he should not be committed to civil prison. Order 21 Rule 40 of CPC provides the procedure to be adopted by the court, on appearance of the judgment debtor in pursuance to the notice issued by the execution court under Order 21 Rule 37 of CPC. When a judgment debtor appears before the court in obedience to the notice, the court has to hear the decree holder and to take all such



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evidence as may be produced in support of the application for execution. The primary burden is on the decree holder to show that the judgment debtor is having the sufficient means to satisfy the decree and his intention was only to delay the execution of the decree.

7. However, in the case on hand, the respondent failed to adduce any evidence in support of the execution petition to show that the petitioner is having sufficient means to satisfy the decree and he intended to delay the execution of the decree. Hence, the order passed by the court below cannot be sustained and it is liable to be set aside. Accordingly, the order passed in REP.No.83 of 2010 in OS.No.67 of 2006 on the file of the learned Subordinate Judge, Dharmapuri is set aside and the proceedings in REP.No.83 of 2010 is remanded back to the Execution Court for fresh disposal. The Execution Court is directed to comply with the provision as observed by this Court and dispose of the EP within a period of eight weeks from the date of receipt of copy of this order. There shall be no order as to costs.

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Speaking/non-speaking
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To
The learned Subordinate Judge,
Dharmapuri

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