



C.R.P.PD.No.945 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24/4/2023
Delivered on	30/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.945 of 2023

Umadevi ... Petitioner

Vs

S. Premnath ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 7/1/2021 made in E.P.No.20 of 2017 in I.A.No.3238 of 2012 in O.P.No.3197 of 2011 passed by the learned III Additional Family Court, Chennai.

For Petitioner ... Mr.D.Nandagopal

For respondent ... Mr.Sudharshana Sundar

ORDER

This Civil Revision Petition is filed aggrieved by the dismissal of E.P.No.20 of 2017 in I.A.No.3238 of 2012 in O.P.No.3197 of 2011, dated 7/1/2021, passed by the III Additional Family Court, Chennai.



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2. The facts which lead the petitioner to approach this Court are that the respondent being the husband of the petitioner has filed O.P.No.3197 of 2011 seeking divorce. During the pendency of the petition, the petitioner/wife has filed an application in I.A.No.3238 of 2012, seeking interim maintenance, under Section 24 of the Family Courts Act, 1984. The said petition came to be allowed, directing the respondent/husband to pay a sum of Rs.7,000/- p.m., from October 2012 onwards.

3. The respondent/husband has committed default in payment of interim maintenance amount thereby the petitioner has filed E.P.No.20 of 2017 for recovery of Rs.3,92,000/- alleging that the respondent has not paid interim maintenance for a period of 56 months at the rate of Rs.7,000/- p.m., from October 2012 to June 2017 and sought for enforcing the directions under Order 21 Rules 43 and 64 of the Code of Civil Procedure by way of attachment in sale of properties mentioned therein.

4. When the Court Officer/bailiff has gone to the the properties for effecting attachment for the execution of E.P, it was realised that the



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properties mentioned in the EP schedule belong to the mother of the respondent/judgment debtor and thereby, the Court officer/bailiff could not be proceeded, further on which, the petitioner has filed E.A.No.22 of 2019 to change the mode of execution and said petition was allowed and accordingly EP was allowed to proceed against the respondent/judgment debtor under Order 21 Rule 37 of the Code of Civil Procedure for affecting his arrest. However, after full-fledged enquiry, the E.P was ultimately dismissed holding that the petitioner has failed to prove the means of the judgment debtor, as required under Order 21 Rule 35 to 40 of the Code of Civil Procedure. Aggrieved by the same, present Civil Revision Petition is filed.

5. Heard Mr.D.Nandhagopal, learned counsel for the petitioner and Mr.Sudharshana Sundar, learned counsel for the respondent.

6. It is not in dispute that the interim maintenance was awarded by the trial Court in O.P.No.3197 of 2011. Order 21 Rule 40 contemplates the procedure to be followed by the Execution Court for affecting arrest of judgment debtor in execution of decree. Order 21 Rule 40 of the Code of Civil Procedure requires that unless an enquiry is conducted in respect



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of means of the respondent and unless the Court records that the judgment debtor is having sufficient funds, to discharge the maintenance amount, the Court cannot order for arrest of the judgment debtor for putting him in civil prison.

7. In the case on hand, during the course of enquiry, the petitioner/decree holder has filed an affidavit, stating that the judgment debtor is having sufficient means and is working as Electrician in Indian Oil Bhavan, Chennai and he is drawing the salary of Rs.35,000/- p.m. and that the mother of the respondent is doing fishing business and is earning Rs.3,000/- per day. Except filing an affidavit that the respondent/judgment debtor, is drawing a monthly salary of Rs.35,000/- p.m., and that his mother was earning Rs.3,000/- per day, the petitioner has not filed any documentary evidence. Neither the petitioner was examined nor produced any oral evidence to prove that the respondent/judgment debtor is having sufficient means to pay the maintenance and that he has been deliberately evading to pay the same.

8. As already discussed, the petitioner has not examined herself and not filed any document to prove that the respondent is an earning



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member. The Execution Court has dismissed the same holding that the petitioner has failed to prove before the Court that the respondent has got the means to pay and however, he has deliberately declined to pay the same.

9. In such a view of the matter, the Execution Court has rightly dismissed E.P.No.20 of 2017, on 7/1/2021. Therefore, reasoning of the trial Court cannot be intervened.

10. In the result, this Civil Revision Petition is dismissed. No costs.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

III Additional Family Court, Chennai.



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