



CRP No.4638 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE LAKSHMINARAYANAN

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Govindasamy

.... Petitioner

VS

Appukutti

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 16.02.2015 made in E.P.No.126 of 2011 in O.S.No.17 of 2004 on the file of Sub Court, Dharapuram.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.J.Deeraj
for Mr.S.M.S.Sriram Narayanan

ORDER

This Civil Revision Petition challenges the order dismissing the Execution Petition in E.P.No.126 of 2011 in O.S.No.17 of 2004 on the file of Subordinate Judge, Dharapuram.



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2. The revision petitioner before me is the decree holder in O.S.No.17 of 2004. He filed a suit against the respondent for recovery of money to the tune of Rs.1,50,000/-.

3. Pending the suit, he had obtained an order of attachment. The suit was decreed after contest on merits on 20.03.2007. Thereafter, the petitioner filed E.P.No.126 of 2011 in order to bring the property for sale. A couple of years before the execution petition was filed, but, two years after the decree, insolvency proceedings were initiated as against the respondent/judgment debtor by one Rajendran. The said proceeding resulted in an exparte decree on 14.09.2009.

4. When the Court was informed by the judgment debtor that he has been declared as insolvent, the learned Judge dismissed the execution petition. Challenge is made in this revision to the said order.

5. Heard Mr.N.Manokaran, learned counsel for the revision petitioner and Mr.J.Deeraj, learned counsel for the respondent.



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6. The narration of the fact makes it clear that the respondent has been declared as insolvent and consequently all the assets vest with the Official Assignee of Coimbatore District. The property, which is the subject matter of attachment, today vests with the Official Assignee and the order in insolvency is one *in rem*. A private unsecured creditor cannot be permitted to bring the property for auction. This position was taken note of and the execution petition has been rightly dismissed by the executing Court.

7. Mr.N.Manokaran, learned counsel brings to my notice that as against the order passed in I.P No.5 of 2009 on the file of Sub Court, Pollachi, he has preferred an appeal before the District Court at Coimbatore and the said appeal is said to be pending. I make it clear that if the said Civil Miscellaneous Appeal against I.P.No.5/2009 is allowed, then, the bar of executing the decree is automatically removed and the successful decree holder can proceed against the property. As long as the respondent is an insolvent, it is only the Official Assignee, who can bring the property for sale and that too, in the interests of the body of the creditors.



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V.LAKSHMINARAYANAN,J.,

sr

8. With the above observation, the Civil Revision Petition is dismissed.

No costs.

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Index:Yes/No

Speaking order/Non-speaking order

sr

To

The Subordinate Court, Dharapuram

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