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C.R.P.No.2427 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2427 of 2019
and C.M.P.No.15873 of 2019

V.N.Ganesh

.. Petitioner

Vs.

1. M/s Cholamandalam Investment and Finance
Co.Ltd.,
(Formerly Cholamandalam DBS Finance Ltd)
“Dare House”, No.2, NSC Bose Road,
Parrys, Chennai-600 001.
Represented by its Area Legal Manager,
Kumaravel.

2. D.Mahendran

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC to set aside the order dated 22.12.2015 made in E.P.No.729 of 2014 (A.C.No.664 of 2010) on the file of the Principal District Judge, at Coimbatore and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstance of the case.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondents : No appearance
Notice served



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ORDER

WEB COPY This Civil Revision Petition has been filed as against the order dated 22.12.2015 made in E.P.No.729 of 2014 (A.C.No.664 of 2010) on the file of the Principal District Judge, at Coimbatore, thereby ordered arrest against the petitioner.

2. Heard Mr.T.L.Thirumalaisamy, the learned counsel appearing for the petitioner. Though notice was served to the respondents, today no one appeared on behalf of the respondents before this Court, in person or through pleader.

3. The first respondent initiated arbitration proceedings as against the petitioner and the second respondent herein. The petitioner wanted to buy a car for his business purpose and he approached the second respondent for loan. For the said loan, the petitioner stood as partner. After purchasing the car, the petitioner failed to repay the loan amount which was availed by him. On the strength of the agreement, the first respondent proceeded with arbitration. The Arbitrator initiated proceedings in which the second respondent failed to appear and he was



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set exparte. The petitioner, being the partner for the loan, appeared and defended the arbitration proceedings. However, the Arbitrator passed an Award, thereby both the petitioner as well as the second respondent were directed to pay a sum of Rs.2,66,243/- with interest at the rate of 12% p.a.

4. On the strength of the award, the first respondent herein filed an execution petition. On receipt of the notice of the execution petition, the petitioner filed a counter. The second respondent remained exparte even before the execution Court. The Execution Court, on a perusal of the affidavit filed in support of the execution petition, ordered arrest of the petitioner and the second respondent.

5. According to their affidavit, the petitioner and the second respondent are earning Rs.40,000/- per month and are owning a movable and immovable property worth about Rs.5 lakhs. Therefore, they are possessing sufficient means to pay the award amount. Hence, their arrest ordered.



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6. It is relevant to extract the provisions under Section 21 Rule 37

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CPC.

ARREST AND DETENTION IN THE CIVIL PRISON

37. Discretionary power to permit judgment debtor to show cause against detention in prison:-

“Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon on him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

PROVIDED that such notice shall not be necessary if the Court is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the court.

2) Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor.”

Thus, it is clear that the Court shall issue notice to call upon the



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Judgment debtor and show cause why he should not be committed to the civil prison.

7. On receipt of the reply, the execution petitioner ought to have proved that the Judgment Debtor has sufficient means to pay the decreed amount. Even then, they failed to pay the same. In the case on hand, no such opportunity was given to the petitioner and also the first respondent failed to prove that the petitioner has sufficient means to settle the decree amount by adducing evidence.

8. Therefore, the order passed by the Court below cannot be sustained as against the petitioner and it is liable to be set aside. Accordingly, the order dated 22.12.2015 made in E.P.No.729 of 2014 (A.C.No.664 of 2010) on the file of the Principal District Judge, at Coimbatore, is hereby set aside. The matter is remanded back to the execution Court for fresh consideration.

9. In view of the above, this Civil Revision Petition is allowed.



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Consequently, connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The Principal District Judge, at Coimbatore.

G.K.ILANTHIRAIYAN,J.



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