



WEB COPY



CRP (MD) No.1457 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED On : 24.08.2022
PRONOUNCED On : 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.1457 of 2022
and
CMP (MD) No.6051 of 202

Micheal Builders and
Developers Pvt Limited,
Represented by its Managing Director,
Praveen T.T.
1/2/182, Kanathukonam,
Cheriyakolla,
Cheruvallloor PO,
Kanniyakumari,
Tamil Nadu

... Petitioner

Vs

The President,
St.Alphoza Trust,
R.C.Diocese of Kottar,
Represented by the Bishop of Kottar,
Nazarene Soosai,
Nagercoil,
Kanniyakumari District

... Respondent

PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the docket order dated 14.06.2022 in EP.No.unnumbered in AROP.No.934 of 2017 on the file of the Principal District Judge, Kanniyakumari at Nagercoil.



WEB COPY



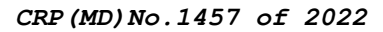
CRP (MD) No.1457 of 2022

For Petitioner : Mr.Veera Kathiravan,
Senior Counsel.
For M/s.Veera Associates
Respondent : Mr.S.Meenakshi Sundaram,
Senior Counsel
assisted by Mr.M.Sengu Vijay

ORDER

This Civil Revision Petition is filed as against the docket order dated 14.06.2022 in EP.No.unnumbered in AROP.No.934 of 2017 on the file of the Principal District Judge, Kanyakumari @ Nagercoil.

2.The petitioner is the builder and he was approached by the respondent in the year 2011 to establish a medical college and hospital for his trust. In this regard an agreement was entered into between the respondent and the petitioner on 13.10.2013. Pursuant to the same, the petitioner has constructed a building for the medical college and hospital for the respondent's trust. There was a due of Rs.20 Crores from the respondent to the petitioner in respect of the construction of the medical college. Since the respondent did not to pay the said due,



3/12



CRP (MD) No. 1457 of 2022

amount with interest and prayed for an order of arrest.

On receipt of notice in EP.No.14 of 2019, the respondent / judgment debtor filed an application in EA.No.1 of 2019 in EP.No.14 of 2019 praying to dismiss the said EP. The execution Court by order dated 10.06.2021 allowed EA.No.1 of 2019 and dismissed EP.No.14 of 2019. Aggrieved over the said order, the decree holder has preferred a civil revision petition in CRP(MD)No.1107 of 2021, which has been allowed by this Court by order dated 12.01.2023 (today). In the meantime, the petitioner / decree holder has also filed another execution petition to attach the properties of the judgment debtor, but the learned Principal District Judge by order dated 14.06.2022 returned the petition that a similar execution petition filed by this petitioner in EP.No.14 of 2019 was already disposed of on merits and challenging the said order, the decree holder has also filed a civil revision petition before this Court in CRP(MD)No.1107 of 2021 and the same is pending and therefore, the petition is not maintainable.

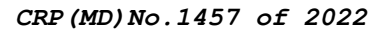
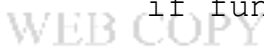
3.The learned Counsel for the petitioner submits that Section 51 of CPC enables the decree holder to enforce the



CRP (MD) No.1457 of 2022

decree in three ways viz., (a) by delivery of property specifically decreed; (b) by attachment and by sale or by the sale without attachment of any property; and (c) by arrest and detention in prison. The provision does not prescribe that without exhausting the option available under Section 51 of CPC, the application for attachment is not maintainable. The order passed in EP.No.14 of 2019 and the civil revision petition filed challenging the same, is not connected with the present execution petition filed by this petitioner for attachment of the property. When the decree holder is having the remedy under Section 51 CPC, he has the liberty to seek any mode of relief, which is easier for him to execute the decree.

4.The learned Senior Counsel by referring the decision reported in **2002(1) MLJ Page 546** submits that it is the right of the decree holder to proceed with the mode he finds easier. The learned Senior Counsel by referring the decision of the Hon'ble Supreme Court in **Anand Agro Chemicals Limited Vs Suresh Chandra** reported in **(2014) 3 SCC page 631** submits that the assumption cannot be made that there is financial distress either because the



5.The learned Senior Counsel appearing for the respondent submits that the petitioner has not presented the execution petition in the proper format and for compliance of certain defects it was returned and without complying with the defects mentioned by the Court, this petitioner has hurriedly approached this Court. The petitioner has not filed the certificate of encumbrance for item No.5 of the property described in the execution petition and the market value of the each item of the property has to be furnished in the execution petition. The petitioner has already filed an execution petition, which was dismissed and the same is under challenge before this Court in CRP(MD)No.1107 of 2021 and therefore, under such circumstances, the subsequent execution petition is not maintainable.

6.The learned Senior Counsel further submits that Rule 139 to 141 of Civil Rules of Practice and Form No.53 of Civil Rules of Practice are very relevant for considering



CRP (MD) No.1457 of 2022

the validity of the order of the executing Court. Form No.53 of the schedule of Civil Rules of Practice clearly states that the capital value of each item of the property is to be stated in the execution petition by the proposed execution petitioner. If the said Rule is not complied with, as per Rule 141 of Civil Rules of Practice, the said execution petition either ought to be rejected or it should be returned for amendment. In the present case the executing Court had in compliance with Rule 141 of Civil Rules of Practice read along with Form No.53 had returned the execution petition for due compliance. Hence the order of the executing Court is in order and this civil revision petition is liable to be dismissed.

7.This Court considered the rival submissions and perused the materials placed on record.

8.The petitioner decree holder has filed this execution petition to attach the properties of the judgment debtor. He has also filed another execution petition to order for an arrest of the judgment debtor, which was dismissed by the trial Court as against which, the civil revision petition filed by the petitioner in CRP (MD) No.1107 of 2021 has been allowed by this



CRP (MD) No. 1457 of 2022

Court by order dated 12.01.2023(today) with a direction to the executing Court to restore the said execution petition and to proceed further. The decree holder is having an option to file an execution petition for attachment as well as for orders of arrest and detention. This position has already been settled by the Hon'ble Full Bench of the Hon'ble Supreme Court in Re Shyam Singh Vs. Collector, District Hamirpur, U.P. and Ors reported in 1993 Supp(1) SCC 693, wherein it has been held as follows:

"12. In the case of The Padrauma Raj Krishna Sugar Works Ltd. v. The Land Reforms Commissioner, U.P. [1970] 75 ITR 358 (SC), in connection with realisation of the Income Tax dues, sugar-cane cess and the price of the sugar-cane, treating them as arrears of Land Revenue, in accordance with the procedure prescribed by Section 279 of U.P. Zamindari Abolition and Land Reforms Act aforesaid itself, it was said by this Court:-

The power exercisable by the Collector in recovering arrears of income-tax which are recoverable as arrears of land revenue are, it is clear, not restricted to the Land Revenue Code: the Collector is entitled to exercise all the powers of a Civil Court for the purpose of recovery of an amount due under a decree under the CPC, and the CPC imposes no obligation to recover the dues by sale of movables or by arrest and detention of the defaulter before



CRP (MD) No.1457 of 2022

WEB COPY

immovable property may be attached... By virtue of Order 21, Rule 30 of the CPC simultaneous execution both against the property and person of the judgment-debtor is allowed.

But still the discretion in the Court to order simultaneous execution must be exercised in a judicial manner. Order 21, Rule 21 of the Code itself provides that "the Court may, in its discretion, refuse execution at the same time Against the person and property of the judgment-debtor."

9. Therefore in view of the above decision of the Hon'ble Supreme Court the decree holder is entitled to file an execution petition for attachment against the property and also for arrest of the person / judgment debtor simultaneously. The pendency of a civil revision petition in CRP(MD)No.1107 of 2021 is not a bar to file the present execution petition. Moreover the said civil revision petition has also been disposed of by this Court.

10. With regard to the other objections, which are raised by the trial Court, as per Rule 39(2) of Civil Rules of Practice, the petition shall if it relates to any property of the judgment debtors, pray for realisation thereof, in the manner appropriate to the nature of the



CRP (MD) No. 1457 of 2022

property as in Form No.53 and shall also set out the whole of the relief which the applicant requires at the time of presenting the same. The Court shall not grant any relief not claimed by execution petition. As per Rule 141 of Civil Rules of Practice, a petition not complying with the provisions of the Code or these Rules or not claiming any substantive claims shall be returned for amendment or rejected. Therefore, the conditions in the Form No.53 have to be fulfilled. As per Form No.53, certain particulars with regard to the description of the property have to be mentioned, but persual of Form No.53 shows that the particulars are not exhaustive in nature. Hence there is no hard principle with regard to the particulars of the property mandated in Form No.53 of the Civil Rules of Practice. The particulars, which are necessary for attachment alone are required to be furnished. Hence the executing court shall verify what is necessary for ordering attachment and number the execution petition.

11. In the result, this Civil Revision Petition is allowed. The executing Court shall number the petition and proceed further in accordance with law. No costs.



CRP (MD) No.1457 of 2022

Consequently connected miscellaneous petition stands closed.

WEB COPY

12.01.2023

Index: Yes/No.

Note: Registry shall return the original documents

dsk

To

The Principal District Judge,
Kanniyakumari at Nagercoil.



WEB COPY



CRP (MD) No.1457 of 2022

B. PUGALENDHI, J.

dsk

CRP (MD) No.1457 of 2022

12.01.2023