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C.R.P(PD)(MD).No.1057 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.04.2023

Pronounced on : 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.1057 of 2018

A.Saravanan

...Petitioner/Plaintiff

Vs.

1.S.Joseph

2.M.Rajeswari

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order passed in E.P.No.6 of 2017 in S.C.No.3 of 2015 on the file of the District Munsif Court, Periyakulam.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : No Appearance

ORDER

This Civil Revision Petition is filed against the order dated 30.01.2018 passed in E.P.No.6 of 2017 in S.C.No.3 of 2015 on the file of the District Munsif Court, Periyakulam.



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2.The brief facts of the case:

The revision petitioner is the plaintiff, who filed a suit in S.C.No.3 of 2015 on the file of the District Munsif Court, Periyakulam against the respondents for recovery of Rs.7,872/- with interest. The defendants filed a written statement. The suit was decreed in favour of the revision petitioner. The defendants have not paid the decree amount and hence, the revision petitioner/plaintiff filed E.P.No.6 of 2017 in S.C.No.3 of 2015 for arrest against the first defendant. The first defendant resisted the petition for arrest by filing a detailed counter. After hearing both, the Executing Court has dismissed the petition in E.P.No.6 of 2017 in S.C.No.3 of 2015 on 30.01.2018. Aggrieved by the order of the Executing Court, the revision petitioner/plaintiff moved this Court by way of this Civil Revision Petition.

3. There has been no representation on the side of the respondents. Heard the petitioner side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner has argued that the revision petitioner has filed the suit for recovery of money against the respondents. After contesting, the suit was decreed on 24.03.2017. The respondents failed to pay the decree amount even though they are deriving income of Rs.1,000/- per day by running a grocery store



and also they are having own property. The respondents have not denied their means. The respondents willfully defaulted in settling the decree amount. Hence, the revision petitioner was constrained to initiate civil detention proceeding as per Order 21 Rule 37 of the Civil Procedure Code and 38 of the Civil Procedure Code against the first respondent and filed the petition in E.P.No.6 of 2017 in S.C.No.3 of 2015 before the Executing Court. The Executing Court observed that the revision petitioner has failed to prove that the first respondent has sufficient means and in spite of having sufficient means the first respondent wilfully evaded to repay the decree amount. The Hon'ble Supreme Court has held in **AIR 1992 SC 1740** that the decree holder is at liberty to choose any mode of relief for recovery of money. Therefore, the impugned order has to be set aside and the revision petition may be allowed.

5. On hearing the learned counsel for the petitioner and on perusal of records, it is clear that the revision petitioner as plaintiff has filed the small cause suit in S.C.No.3 of 2015 on the file of the District Munsif Court, Periyakulam for recovery of Rs.7,872/- against the respondents. There is no dispute that the suit was decreed on 24.03.2017 and no appeal was filed against the decree and judgment passed by the Trial Court in S.C.No.3 of 2015. The revision petitioner has straight away filed the petition for arrest before the Executing Court in E.P.No.6 of 2017 in S.C.No.3 of 2015. The



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revision petitioner has clearly stated in his affidavit filed along with E.P.No. 6 of 2017 that the respondents/judgment-debtor has owned as house worth Rs.2 lakhs and also immovable properties worth Rs.3 lakhs in Melmangalam. He has further averred that the respondents have been deriving a sum of Rs.1,000/- per day by investing Rs.2 lakhs through grocery shop. From the affidavit itself, it is clear that the revision petitioner himself admitted that the respondents have sufficient means and immovable properties.

6. In this circumstance, the learned counsel for the revision petitioner has argued that the decree-holder has every right to proceed in a way he likes against the judgment-debtor to recover the decree amount. He placed reliance on the citation reported in **AIR 1992 SC 1740**. The Hon'ble Supreme Court in the case reported in **2017-2 Law Weekly 298** laid down the principle held that without filing any petition for attachment of property of the judgment-debtor, the respondents-decree holder could not directly file the petition for arrest. In this case, the revision petitioner has clearly admitted that the respondents have owned immovable property having sufficient worth more than the decree amount and have been deriving daily income. In such circumstances, the revision petitioner could not file the petition. He should have filed the petition for attachment of property. The



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decree amount is a meagre amount of Rs.7,872/- with interest. In this circumstance, the learned counsel for the revision petitioner has submitted that the first respondent has wantonly evaded to repay the decree amount though he has sufficient means and he is ready to prove the same and prayed for remanded back the matter to the Executing Court. Therefore, in the interest of justice, an opportunity is to be given to the petitioner to prove his case, this Court is inclined to remand the matter back and thereby set aside the impugned order.

7. In the result, this Civil Revision Petition is allowed and the order dated 30.01.2018 passed in E.P.No.6 of 2017 in S.C.No.3 of 2015 on the file of the District Munsif Court, Periyakulam is set aside. The matter is remanded back to the Executing Court for fresh enquiry and the revision petitioner is at liberty to adduce oral and documentary evidence to prove his case. No costs.

21.07.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

- 1.The District Munsif Court,
Periyakulam.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

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Pre - Delivery Order made in
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