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C.R.P(NPD)(MD).No.1361 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.04.2023

Pronounced on : 21.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.1361 of 2018

A.Saravanan

... Revision Petitioner/Plaintiff

Vs.

M.Chellamuthu

... Respondent/Defendant

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order dated 06.03.2018 passed in E.P.No.3 of 2017 in O.S.No.46 of 2012 on the file of the District Munsif Court, Periyakulam.

For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.R.Shankar Ganesh

ORDER

This Civil Revision Petition is filed against the order dated 06.03.2018 passed in E.P.No.3 of 2017 in O.S.No.46 of 2012 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 in O.S.No.46 of 2012 on the file of the District Munsif Court, Periyakulam. The petitioner filed the said suit against the respondent/defendant for recovery of money of Rs.22,740/- on the basis of promissory note dated 07.01.2011 for Rs.20,000/- executed by the defendant in favour of the plaintiff. The suit was decreed. The defendant was running a grocery store and deriving income of Rs.1,500/- per day. The defendant owned a property worth Rs.3 lakhs. However, the defendant failed to settle the decree amount. Therefore, the petitioner has filed the petition in E.P.No.3 of 2017 in O.S.No.46 of 2012 before the Executing Court for arrest of the respondent and to detain in civil prison. After hearing both, the Executing Court has dismissed the petition in E.P.No.3 of 2017 in O.S.No.46 of 2012 on 06.03.2018. Aggrieved by the order of the Executing Court, the petitioner moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.



4. The learned counsel appearing for the petitioner has argued that the petitioner has filed the suit for recovery of money on the basis of promissory note for Rs.20,000/- executed by the respondent. After contest the suit was decreed. The respondent failed to pay the decree amount even though he is deriving income of Rs.1,500/- per day by running a grocery store and also he is having own property. The respondent has not denied his means. The respondent willfully defaulted in settling the decree amount. Hence, the petitioner was constrained to initiate civil detention proceeding as per Order 21 Rule 37 of Civil Procedure Code and filed the petition in E.P.No.3 of 2017 in O.S.No.46 of 2018 before the Executing Court. The Executing Court without considering the facts and circumstances of the case dismissed the said petition. 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 revision petition may be allowed by setting the impugned order.

5. The learned counsel appearing for the respondent vehemently contended that the Executing Court has correctly discussed the facts of the case and rightly dismissed the petition for arrest. It is settled principle of law that the decree holder must have filed petition for



attachment of property first, then only he could file a petition for arrest.

In this case, the petitioner himself admitted in his affidavit that the respondent owned an immovable property worth Rs.3 lakhs and also the respondent is having daily income through grocery store. The citation in ***AIR 1992 SC 1740*** relied on by the petitioner is not applicable. Because, the said citation was discussed by the Hon'ble Supreme Court in the case of '***T.Dharmalingam v. K.P.Bharathi & others***' reported in ***2017-2 Law Weekly 298*** and held in paragraph No.21 as follows:

“21. When the Executing Court passing orders of arrest, they should follow the procedure laid down in Rule 39 and 40 of C.P.C since it is the duty of the Executing Court, before ordering the arrest of judgment-debtor, the Executing Court shall hold an enquiry and give a finding as to the correct means of the judgment-debtor to discharge the decree before ordering arrest under Rule 37 of C.P.C. This was clearly held by this Court in the case of M.Muthuswamy v. Supasri Chit Funds, Coimbatore and another reported in 2000(2) CTC 168, the Executing Court should follow the procedure laid down in 39 and 40 of C.P.C and the order passed without following such procedure in law and is liable to be set aside.”

Therefore, the petition may be dismissed.



6. On hearing both and on perusal of records, it is clear that the petitioner as plaintiff has filed the main suit in O.S.No.46 of 2012 on the file of the District Munsif Court, Periyakulam for recovery of money against the respondent. There is no dispute that the suit was decreed on 07.12.2016 and no appeal was filed against the decree and judgment passed by the Trial Court in O.S.No.46 of 2012. The petitioner has straight away filed the petition for arrest before the Executing Court in E.P.No.3 of 2017 in O.S.No.46 of 2012. The petitioner has clearly stated in his affidavit filed along with E.P.No.3 of 2017 that the respondent/judgment-debtor has owned as house worth Rs.3 lakhs and also immovable properties worth Rs.3 lakhs in Melmangalam. He has further averred that the respondent has been deriving a sum of Rs.1,500/- per day by investing Rs.2 lakhs through grocery shop. From the affidavit itself, it is clear that the petitioner himself admitted that the respondent has sufficient means and immovable properties.

7. In this circumstance, the 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 respondent's counsel strongly oppose and contends that the citation was discussed by the



Hon'ble Supreme Court in a case reported in **2017-2 Law Weekly 298**

laid down the principle as submitted supra. On a careful perusal of the verdict of the Hon'ble Supreme Court reported in **2017-2 Law Weekly 298** it is clearly held that without filing any petition for attachment of property of the judgment-debtor, the respondent-decree holder could not directly file petition for arrest. In this case, the petitioner has clearly admitted that the respondent has owned immovable property having sufficient worth more than the decree amount and has been deriving daily income. In such circumstance, the petitioner could not straight away file petition for arrest without following the procedure under Rule 39 and 40 of Order 21 of Civil Procedure Code. He should have filed petition for attachment of property. As rightly argued by the learned counsel for the respondent, the Executing Court has correctly discussed the facts and circumstances of the case and has correctly dismissed the petition by passing the impugned order dismissing the petition in E.P.No.3 of 2017 in O.S.No.46 of 2012, which needs no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.



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

21.06.2023

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.

vsd

Pre - Delivery Order made in
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