



C.R.P.(PD).No.1230 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.1230 of 2024

and

C.M.P.No.6481 of 2024

R.Prabhakar

... Petitioner

VS

G.S.Dhandapani

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908, praying to allow the Civil Revision Petition and set aside the Order dated 13.02.2024 made in E.P.No.51 of 2021 in O.S.No.284 of 2013 on the file of Subordinate Judge, Pollachi.

For Petitioner : Mr.N.Vijaya Basker
for Law Vision

ORDER



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The Civil Revision Petition is filed challenging the order passed by the Executing Court dated 13.02.2024 ordering arrest of the petitioner in execution of decree for recovery of money.

2. It is seen from the records that respondent herein obtained a money decree against the petitioner in O.S.No.284 of 2013 for a sum of Rs.10,00,000/- together with interest.

3. As the petitioner failed to satisfy the decretal amount, the respondent filed execution petition in E.P.No.51 of 2021 for arrest of the petitioner. The same was contested by the petitioner by filing a counter to the effect that the respondent/decreed holder is not entitled to maintain the execution petition for arrest instead of moving against the immovable property of the petitioner. It is also stated that the petitioner filed first appeal in A.S.No.28 of 2022 challenging the judgement and decree passed by the Trial Court in O.S.No.284 of 2013, dated 24.09.2021 and the same is pending.

4. The learned counsel for the petitioner submitted that the petitioner also moved the stay application before the First Appellate Court and the same



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has not been considered as the First Appellate Court is inclined to take up very appeal itself.

5. A perusal of the adjudication sheet enclosed in the typed set of papers would suggest that the appeal in A.S.No.28 of 2022 has been adjourned from 21.02.2023 onwards under the caption for arguments. Since there is no stay from the First Appellate Court, the Executing Court rightly proceeded with execution petition and passed an order of arrest against the petitioner. At this stage, the petitioner is not entitled to canvass the correctness of the decree under execution. When there is no stay granted against the execution proceedings by the First Appellate Court, the executing Court is entitled to proceed with execution of the decree. The order impugned in this revision cannot be attacked on the ground that appeal against the decree is pending before the First Appellate Court. It is also seen that the first appeal has been adjourned from 21.02.2023 onwards for the purpose of hearing arguments without any progress.

6. In such circumstances, taking into consideration the totality of the facts, this Court is inclined to keep the order impugned in this revision at



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abeyance for a period of one week. It is for the petitioner to move the First Appellate Court and get appropriate interim relief. If the petitioner is not able to get any interim relief from the First Appellate Court on or before 05.04.2024, the Executing Court is entitled to proceed further in pursuance of the order impugned in this revision.

7. With this observation, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected civil miscellaneous petition is closed.

27.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

Note: Issue Order Copy on 28.03.2024.



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To

WEB COPY
The Subordinate Judge,
Pollachi.



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S.SOUNTHAR, J.

dm

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