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C.R.P.No.1273 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.1273 of 2024

Shyama Prasad.K

.... Petitioner

vs

P.K.V.Raghunath

.... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order dated 07.12.2023 passed in E.P.No.4 of 2019 in I.A.No.154 of 2019 in O.S.No.24 of 2015 on the file of District Munsif cum Judicial Magistrate Court, Mahe.

For Petitioner : Mr.T.Sai Krishnan

For Respondent : M/s.T.Mathi

ORDER

The Civil Revision Petition has been filed against the order dated 07.12.2023 passed in E.P.No.4 of 2019 in I.A.No.154 of 2019 in O.S.No.24 of 2015 on the file of District Munsif cum Judicial Magistrate Court, Mahe.



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2. The brief facts:

The petitioner is the decree holder/plaintiff in O.S.No.24 of 2015. The petitioner has filed the suit in O.S.No.24 of 2015 seeking for mandatory injunction directing the respondent/defendant to give vacant possession of the plaint schedule residential building and vacate the residential building and remove all the belongings of the respondent/defendant in the residential building.

3. In the suit, the petitioner/plaintiff had filed I.A.No.154 of 2019 under Order 39 Rule 10 and Section 151 of Civil Procedure Code to pass interim orders directing the respondent/defendant to pay a sum of Rs.1,61,000/- towards the arrears of license fee for the period from 01.10.2015 till 31.01.2019 and also directing the respondent to pay on the 7th of every month sum of Rs.4,000/- towards monthly license fee for the period starting from 01.02.2019. The trial Court, by order dated 23.08.2019 allowed I.A.No.154 of 2019 directing the respondent/defendant to deposit a sum of Rs.1,88,000/- towards arrears of license fee for the period from 01.10.2015 till 31.08.2019 within one month from the



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date of that order and to deposit Rs.4,000/- on the 7th of every month towards monthly license fee from 01.09.2019. After trial, the suit came to be decreed on 10.12.2021. The respondent/defendant also vacated the premises. While so, the petitioner has filed an execution petition in E.P.No.4 of 2019 under Order XXI Rule 11(2) & 37 read with Section 151 of Civil Procedure Code to pass an order of arrest against the respondent/defendant/judgment debtor and detain him in Civil prison and also direct the respondent/defendant/judgment debtor to pay a sum of Rs.1,92,000/-.

4. The petitioner contended that the respondent/defendant was a renowned and eminent lawyer, practicing in Sub Court, Mahe and Thalassery and having sufficient means and sold 35 cents of landed property comprised in S.No.10/1 in Chokli Sub Registration District and has adequate liquid cash and he is capable to paying the entire decree amount in lumpsum.

5. The respondent has filed counter denying the allegations. On the side of the petitioner/plaintiff, the petitioner examined himself as P.W.1 and Exs.P.1 to P.5 were marked. No one was examined on the side of the respondent/defendant



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and certified copy of judgment in O.S.No.24 of 2015 has been marked as Ex.R.1.

The Court summoned a staff from the Sub Registrar's Office and he was examined as C.W.1 and one Village Officer was examined as C.W.2 and the Report filed by Village Officer, Chokli was marked as Ex.C.1. The executing Court had dismissed the petition holding that the petitioner had failed to establish the means of the respondent. Challenging the same, the present civil revision petition has been filed.

6. Mr.T.Sai Krishnan, learned counsel for the petitioner/plaintiff/decreed holder submits that the respondent/defendant/judgment debtor is a Senior advocate and he had sufficient means and there was a specific plea at paragraph No.8 of the affidavit stating that the respondent/defendant/judgment debtor is a leading Senior Lawyer, practicing for 44 years both in civil and criminal and he also runs two Law Offices, one at Sreelakshmi, Paral Post, Chembra and another office near District Court Post Office, Thalassery. Learned counsel submits that the respondent is a man of sufficient means. The Execution Petition had been filed pursuant to the order passed in I.A.No.154 of 2019, whereas, the executing court, without properly assessing the matter, wrongly holding that the respondent



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was not having sufficient means, had dismissed the petition. Learned counsel further submits that the petitioner is ready to establish the fact that the respondent is a practicing advocate and he has got sufficient means and therefore, the learned counsel prays that the order passed in E.P.No.4 of 2019 may be set aside and the matter may be remitted back to the executing court affording one more opportunity to the petitioner to establish his case.

7. Per contra, Mr.T.Mathi, learned counsel for the respondent/defendant/judgment debtor submits that the plea raised by the petitioner was that the respondent was holding landed property in S.No.10/1. The Court, after examining C.W.1, the staff of the Sub Registrar's Office and the Village Officer as C.W.2, has come to the conclusion that the respondent was not owning any property and dismissed the application. Learned counsel for the respondent submits that there is no illegality or irregularity in the order passed in E.P.No.4 of 2019 and therefore, seeks dismissal of the revision.

8. Heard both sides and perused the materials available on record.



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9. Admittedly, it is the case of the petitioner/landlord that the respondent/defendant/judgment debtor is a Senior Advocate and he was practicing for the last 44 years both in civil and criminal matters in Mahe and neighbouring State of Kerala, having two Law Offices, one at Sreelakshmi, Paral Post, Chembra and another office near District Court Post Office at Thalassery. The executing court, after examining C.W.1 and C.W.2 with regard to the landed property in S.No.10/1 in Chokli, had dismissed the petition without rendering a finding with regard to the professional status and the averment of the petitioner regarding the judgment debtor running two law offices in his name. This Court is of the opinion that one more opportunity should be afforded to the petitioner to put forth and prove his case that the respondent is having sufficient means.

10. In view of the above, the order passed in E.P.No.4 of 2019 in I.A.No.154 of 2019 in O.S.No.24 of 2015 on the file of District Munsif cum Judicial Magistrate Court, Mahe is set aside and the Civil Revision Petition is allowed. The matter is remitted back to the trial Court and the executing Court shall, after affording opportunity to both sides, dispose of E.P.No.4 of 2019



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within a period of four months from the date of receipt of a copy of this order. No

costs.

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sr

Index:yes/no

website:yes/no

To

The District Munsif cum Judicial Magistrate Court, Mahe.



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A.D.JAGADISH CHANDIRA,J.,

sr

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