



C.R.P.(PD).No.1201 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024
Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1201 of 2022 &
C.M.P.No.6432 of 2022

Panneerselvam ... Petitioner

-Versus-

Bhoopathi ... Respondent

Civil Miscellaneous Petition filed under Article 227 of Constitution of India to set aside the order passed in E.P.No.56 of 2016 in O.S.No.85 of 2012 dated 08.12.2021 on the file of the Additional District Munsif, Tirupattur, Vellore District.

For Petitioner : *Mr.M.Arun for*
M/s. Karan and Uday
For Respondent : *Mr.V.V.Sathya*

ORDER

This revision arises against an order passed in E.P.No.56 of 2016 in O.S.No.85 of 2012.



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WEB COPY 2. O.S.No.85 of 2012 was presented on the file of the Principal District Munsif Court at Tirupattur for the purpose of recovery of Rs.63,500/- at the rate of 9% per annum. The suit was based on the foot of a promissory note. The suit was decreed against which the defendant preferred a regular appeal before the learned Subordinate Judge at Tirupattur in A.S.No.30 of 2016. The said appeal was dismissed on 27.02.2018. Thereafter, a second appeal was preferred before this Court in S.A.No.475 of 2019. The second appeal was also dismissed. Thereby, the judgment and decree of the learned District Munsif dated 28.03.2016 has attained finality.

3. Since the decree amount remains unpaid, the decree holder filed E.P.No.56 of 2016 on the file of the Additional District Munsif at Tirupattur.

4. The judgment debtor was served. He filed a counter stating that he is a pensioner, has household expenditures and is unable to pay the decree amount. The learned judge received the evidence of the decree holder as PW1 who marked Ex.P1 and Ex.P2, and the respondent examined himself as RW1, through whom the written statement filed in O.S.No.85 of 2012 was received as



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Ex.P3.

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5. Considering the overall circumstance of the case, the learned District Munsif ordered an arrest. Challenging the same, the present revision has been presented.

6. When the matter came up before this Court, it was ordered that the judgment debtor need not be arrested on condition, he deposits 50% of the EP amount on or before 29.04.2022.

7. Mr.M.Arun, learned counsel appearing for the petitioner, represents that he has complied with the order of this court dated 19.04.2022.

8. I adjourned the matter in order to give an opportunity to the judgment debtor to come forward with a time schedule under which he will clear the balance of the decree amount.

9. Mr.M.Arun represents that the judgment debtor is not in a position to



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settle the balance. Hence, I am dealing with the revision on merits.

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10. The aforesaid narration of the facts would show that sufficient opportunity had been given to the judgment debtor to settle the decree amount. Despite the same, he has not been in a position to settle the amount. The respondent, in his statement filed as Ex.P3, has admitted that the combined income of the family is close to about Rs.1,70,000/-. Apart from that, he has also stated that he has Rs.10,00,000/- in fixed deposit. Therefore this is not a case of no means to pay, but it is a case of lack of willingness to honour the decree.

11. I do not find any mistake committed by the executing court in ordering the arrest. Therefore, I am left with no other option than to dismiss the revision and confirm the order of the learned trial judge in E.P.No.56 of 2016 in O.S.No.85 of 2012 dated 08.12.2021.

12. The learned Executing Court is directed to take up the matter on priority basis and dispose of the same as the parties are senior citizens.



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13. With the above direction, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

17.04.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Additional District Munsif, Tirupattur, Vellore District.



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V.LAKSHMINARAYANAN, J.

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