



CRP NPD.No.2066 of 2025

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THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 02.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.2066 of 2025 & CMP.No.12010 of 2025

P.Murugesan

. . . Petitioner

Versus

1. Ms/.Design

Rep. By its Proprietor S.Jeganathan
Door No.30-1, Chindhamani Nagar,
Murugampalayam Main Road,
Parapalayam, Tiruppur Taluk.

2. Sri Sabari Fasion,

Rep. By its Proprietor P.Murugesan,
S.F.No.21/12. Banu Thottam, Kari Pudur,
Arulpuram Post, Tiruppur Taluk.

3. M.Parimalam

. . . Respondents

PRAYER : Petition filed under section 115 of Code of Civil Procedure to set aside the fair and final Order dated 07.04.2025 made in E.P.No.149 of 2024 in O.S.No.120 of 2014 on the file of the Court of the Principal Subordinate Judge, Tiruppur.



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CRP NPD.No.2066 of 2025

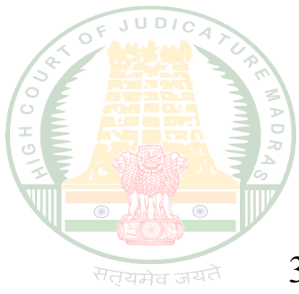
For petitioner : Mr.R.Nandha Kumar

For respondents : Mr.M.Sivavarthanan – R1

ORDER

Challenge has made to Ordering of Civil arrest of the petitioner by the Execution Court, in the present Civil Revision Petition has been filed.

2. The Execution Petition has been originally filed to enforce the decree and judgment dated 07.06.2023. The suit in O.S.No.120 of 2014 has been filed for recovery of money from the revision petitioner. The suit has been decreed as against the revision petitioner. In the Execution Petition, arrest has been sought to be Ordered. The Execution Court passed an Order ordering arrest of the revision petitioner. Means affidavit has already been filed by the revision petitioner at the time of the Execution Petition. Hence, the Civil Revision Petition.



CRP NPD.No.2066 of 2025

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3. I have perused entire materials. A perusal of the Order of the Executing Court, it is seen that the Order is totally against the very fundamental rule dealing with arrest of a person in the Execution Petition. While Ordering arrest, the Executing Court has to follow the procedure contemplated under XXI Rule 37 of Code of Civil Procedure. Thereafter, when the judgement debtor appears before the Court in execution of a decree for payment of money, the Court shall proceed to hear the decree holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment debtor an opportunity of showing cause why he should not be committed to Civil Prison. Further before Ordering any arrest, it should be established by the decree holder that the judgment debtor has sufficient means to satisfy the decree and he is willfully evading to satisfy the decree. Only on such evidence, the civil arrest can be ordered.

4. In this case, no evidence, whatsoever, has been let in by the decree holder to show that the judgment debtor has sufficient means to satisfy the



CRP NPD.No.2066 of 2025

decree amount and he is purposely evading to pay the decree amount.

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Therefore, this Court is of the view that the matter has to be remanded to the Executing Court for following the procedure as contemplated under Order 21 Rule 37 of Code of Civil Procedure.

5. Accordingly, this Civil Revision Petition is allowed and the Order of the Executing Court passed in E.P.No.149 of 2024 in O.S.No.120 of 2014 is set aside and the matter is remanded to the Executing Court and the decree holder is at liberty to prove the means of the judgment debtor. On such evidence, the Execution Court shall pass Order on merits. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To,

1. The Principal Subordinate Judge, Tiruppur.

Page 4 / 5



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CRP NPD.No.2066 of 2025

N. SATHISH KUMAR, J.

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CRP NPD No.2066 of 2025

02.07.2025