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CRP(NPD) No.4256 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.06.2025

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P (NPD) No.4256 of 2019 and CMP No.27780 of 2025

S.Elangovan

... Petitioner

..Vs.

1.K.Subbarayan

2.Rathinam

... Respondents

Prayer: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the docket order of the learned Additional Subordinate Judge, Namakkal dated 04.11.2019 in R.E.P No.91 of 2018 in A.O.P No.1 of 2016 .

For Petitioner : Mr. Jeremiah Gregory John

For R1 : Mr.T.Murugananthan

For R2 : No Appearance



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ORDER

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Challenge has been made to the order of the Executing Court ordering the arrest of R1 for not filing a counter.

2. Heard both sides.

3. It is relevant to note that the order for arrest of judgment-debtor in civil prison under Order XXI Rule 37, 40 and 51 of CPC has to be followed. Before ordering such arrest, the Court ought to have satisfied that the judgment-debtor has means to satisfy the decree. Only establishing such means, arrest can be ordered and thereafter, a show cause notice has to be ordered. Even thereafter, if the amount has not been paid, the arrest order can be issued. Without following any procedure, as a matter of right civil arrest cannot be ordered. Hence, the impugned order of arrest is liable to be set aside. The Executing Court, after following the above procedure has to decide whether the judgment-debtor is avoiding the payment purposefully, then pass order on its own merits.



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4. In the result, this Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

25.06.2025

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To

The Additional Subordinate Judge,
Namakkal



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N.SATHISH KUMAR,J
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