IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 09.01.2025
Coram
The Hon'ble Mr.Justice **N.Sathish Kumar**

C.R.P.(NPD)No.29 of 2025
and
C.M.P.No.241 of 2025

R.Sabik Ahamed ...Revision Petitioner

Vs.

1. Margadarsi Chits Pvt. Ltd.,
   rep. by its Foreman P.Vilasini
   II Floor, East Wing, Door No.302,
   Sam Complex, K.S.R.Nagar,
   M.T.H. Road, Ambattur, Chennai – 600 053.

2. Mrs.A.Naseem Banu
3. Mr.A.Ansar Ahmed
4. Mr.M.M.Sheik
5. Mr.A.Zakir Hussain
6. Mr.M.A.Mohamed Haneefa ..Respondents

Civil Revision Petition filed under Section 115 of CPC is preferred against the order dated 12.12.2024 in E.P.No.274 of 2022 in ARC No.172 of 2018, on the file of the Court of X Assistant Judge, City Civil Court, Chennai

For Revision Petitioner : Mrs.S.A.Mahisha Kirthika

For Respondent-1 : Mr.D.Shivakumaran

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Challenging the order of arrest passed by the Executing Court in E.P.No.274 of 2022 dated 12.12.2024, the present Revision Petition is filed.

2. The brief facts of the case are as follows:-

i) The first respondent filed an Arbitration Case in ARC.No.172 of 2018 against the revision petitioner and respondents 2 to 6, wherein, an ex parte award has been passed on 28.03.2019, directing the judgment debotors to pay a sum of Rs. 24.15,022/- with interest at 24% p.a. jointly or severally. As the said award amount has not been paid, Execution Petition has been laid by the first respondent/decree holder. In the Execution Petition, the revision petitioner/fifth judgment debtor has filed a counter affidavit, inter alia stating that the second respondent/first judgment debtor joined chit with the first respondent/decree holder for a sum of Rs.50,00,000/-; that the judgment debtor has allowed to take the chit amount of Rs.32,50,000/- after deduction of discount on 15.06.2014, and executed a promissory note for a sum of Rs.44,00,000/-, wherein, the revision petitioner has signed as a guarantor; that the second respondent/first judgement debtor, due to sudden financial crisis, could not pay the chit amount, hence, the first respondent/decree holder filed Execution Petition. The Executing Court passed an order for execution of the decree by arrest and detention of the fifth judgment debtor/revision petitioner. Challenging the same, the present Revision Petition is filed.

3. The learned counsel appearing for the revision petitioner would submit that revision petitioner is no way connected with the chit transaction of the second respondent; that since the first respondent insisted the revision petitioner to sign in the document, he merely stood as guarantor and made a formal signature in the documents, apart from that, the award passed in A.R.C.No.172 of 2018, is only an ex parte, as he was not served with any notice in the said proceedings; that as against such ex parte award, the revision petitioner has filed an Appeal before the Secretary, Registration and Commercial Tax Department, Secretariat, Chenai and the same is pending. Thus, by averring so, the learned counsel prayed for setting aside the impugned order.

4. The learned counsel appearing for the first respondent/decree holder would submit that the Executing Court on evaluation of evidence and documents in a proper manner found that the revision petitioner has means to satisfy the decree amount, despite the same he is evading from making such payment, rightly ordered the Execution Petition by arrest and detention of the revision petitioner and the same calls for no interference.

5. Heard the learned counsel appearing for the revision petitioner and the first respondent and perused the materials available on record. Considering the fact that the order under challenge in this Revision Petition is only directed against the revision petitioner/fifth judgment debtor, notice to respondents 2 to 6/other judgment debtors is dispensed with.

6. Admittedly, an Award has been passed by the learned Arbitrator in A.R.C. Proceedings directing the revision petitioner and respondents 2 to 6, who are the judgment debtors thereunder to pay a sum of Rs.24,15,022/- along with interest at the rate of Rs.24% to the first respondent/decree holder jointly or severally. Since the said amount has not been paid, the first respondent/decree holder filed an Execution Petition in E.P.No.274 of 2022 seeking for execution of the decree under Order 21 Rules 37 and 38 CPC by arrest and detention of the judgment debtor No.5/revision petitioner. In the said Execution Petition, the revision petitioner filed a counter affidavit, inter alia denying his liability by stating that the second respondent/first judgment debtor, viz., Nasseem Banu is the successful bidder in the Chit Transaction that took place between the first respondent/decree holder and herself ; that in the said Chit, the revision petitioner merely stood as a Guarantor; that he is no way connected with the said Chit Transaction and further that he has no means to pay the award amount, as he has closed his business long back. However, the first respondent/decree holder to prove the means of the revision petitioner, examined one P.Vilasini as P.W.1 and marked four documents as Exs.P.1 to P.4; that the Executing Court, on consideration of evidence of P.W.1, Ex.P.1/Suretry Form, wherein, the revision petitioner stood as guarantor, Exs.P.2 and P.4 viz., the Income Tax Returns filed by the revision petitioner for the Assessment Years 2011-2012, 2012-13 and 2013-14 found that the revision petitioner/fifth judgment debtor, being an income tax assessee, has source of income to satisfy the decree amount, however, evading from making payment, rightly ordered for execution of the decree by arrest and detention against the revision petitioner.

6.1 Thus, when the first respondent/decree-holder established the means of the revision petitioner/fifth judgment-debtor; that unless and until the evidence of P.W.1. remains unchallenged and the documents marked as Exs.P.2 to P.4, viz., Income Tax Returns from the Assessment Year 2011 to 2014 respectively is not rebutted and there is no contra evidence marked on the side of the judgment debtor, the revision petitioner, cannot, as a matter of right, assail such order in the present Revision Petition.

7. Hence, this Court does not find any merits in the Revision Petition. Accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.01.2025

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To

The X Assistant Judge, City Civil Court, Chennai

N.Sathish Kumar.J.,

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