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12.11.2026

ORDER

1. This E.P is filed by the decree holder under Order 21, Rule 37 & 38 of the Code of Civil Procedure, 1908 to execute the decree dated 19.11.2020 by issuance of warrant to arrest and detain the Judgment debtor in civil prison.

2. The decree holder submitted that he has filed a suit for recovery of money against the Judgment debtor in C.S No.443 of 2018 which was decreed with cost on 19.11.2020. Even after the paasing of the decree, the Judgment debtor failed to comply with the decree passed by this court and so he has filed this execution petition for realisation of the decreetal amount by arrest and detention of the Judgment debtor in civil prison.

3. The Judgment debtor has filed a detailed counter affidavit raising several objections which pertains to the main suit and are not relevant to decide this execution petition as it is settled law that Execution Court cannot go beyond the decree. The only objection which was raised by the Judgment debtor with regard to this E.P is that he had filed an application in A.No.6107 of 2019 to grant leave to defend the suit, which was allowed by this court on 13.03.2020 on condition that he is to pay a sum of Rs.1,04,79,000/- and while the Judgment debtor proceeded to make arrangement for the said payment complete lockdown from 25.03.2020 was announced by the Government of India and the State Government. Subsequent to which he filed two applications in A.Nos.1953 & 1954 of 2020 to live the Order dated 13.03.2020 and to extend the time for making payment under Order dated 13.03.2020 in A.No.6107 of 2019. The said two applications were allowed by an Order dated 14.09.2020 and he was directed to deposit

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a sum of Rs.20,00,000/- within a period of one month from the date of order and the case was posted for compliance on 16.10.2020. Despite his efforts he was unable to comply with the Order because of his counsel and his friend one Mr.Mohankumar through whom a sum of Rs.20,00,000/- was arranged were affected with Covid-19. The said applications were dismissed for non-compliance of the conditional order as against which the Judgment debtor has preferred appeal along with an application to condone the delay of 1186 days in filing an appeal which is pending. Hence, the E.P is liable to be dismissed.

4. Now, the point for determination is whether this E.P is to be allowed and a warrant of arrest can be issued to arrest and detain the Judgment debtor in civil prison?

5. Heard both side counsels and materials on record perused. To substantiate its case, the authorised representative of the decree holder company filed his means affidavit and examined as PW1. It is needless to say that before issuance of the warrant for arrest it is the duty of the Executing Court to ascertain two things, firstly, the Judgment debtor has sufficient means to pay the decreetal amount and subsequently, the Judgment debtor is purposely and willfully evading the payment in order to defeat or deceit the decree holder.

6. The authorised representative of the petitioner company who entered into the witness box by filing means affidavit has deposed that the Judgment debtor has sufficient means. He further deposed that the Judgment debtor is carrying on a business with GST No.33AAFM6229A1ZR and the Judgment debtor is an income tax assessee and intentionally in order to defraud the decree holder evading the payment of decreetal amount. PW1 was cross examined by the respondent/Judgment debtor. A careful perusal of the evidence of the decree holder it is seen that he has not proved that the Judgment debtor as a bad element of faith in mind and having sufficient means to pay

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the amount. Simple default in payment of decree amount to the decree holder is not enough but it is for the decree holder to prove that there is an element of bad faith in the mind of the Judgment debtor and the Judgment debtor is deliberately evading to pay the decree amount inspite of he having sufficient funds to pay.

7. The learned counsel for the Judgment debtor argued that the decree holder failed to establish the bad faith of the Judgment debtor in not paying the decreetal amount despite he having sufficient means to pay and PW1 in his cross examination has admitted that he has not filed any documents to substantiate his averment that the Judgment debtor is carrying on business with GST number mentioned in his affidavit and also he has not mentioned the nature of the business carried on by the Judgment debtor and so, this E.P is liable to be dismissed. In support of his contention that mere statement that the Judgment debtor is having sufficient means is not enough to issue a warrant for arrest and detain the Judgment debtor in civil prison, he relied on the decision in **Ramaswamy –Vs-- Pushpa 2017 SCC online Madras 14445** wherein our Hon'ble Supreme Court held in **Para 26**

"*Now,it is firmly settled that even in an eecution petition under Order 21, Rule 37 C.P.C, simply because the decree holder wishes that the Judgment debtor should be made to count the bars of a civil prison on account of his inability to pay the decree debt, the court could not send the debtor to jail unless he has current ability to clear off the debt or he has malafide refusal or he has some other vide or mens rea apart from his failute to foot the decree."*

8. This court obliges to refer a Judgment in **Ganesan Nadar –Vs-- K.Chellathai Ammal** reported in 100 Law Weekly 431 wherein it is held that

"It is true that Ex.A4 and A5 have been found to prove that there are two houses which belong to the Judgment debtor but merely because the Judgment debtor

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possess immovable property an order of detention in civil prison cannot be made for his failure to pay."

"It is open to the decree holder to file a petition for attachment and sale of immovable property, the decree holder in this case has not taken recourse of those provisions, it is obvious that he is utilising the provisions under Order 21, Rule 38 of C.P.C merely as a lever to force the payment without taking recouse to the proceedings for attachment and sale of immovable property. The petitioner clearly appears to be wholly malafide.

9. This court obliges to refer yet another decision in **Jolly George Varghese –Vs—Bank of Cochin AIR 1980 Supreme Court 470** *wherein it is held that "Exparte order pased based on the affidavit filed by the decree holder wherein it is stated that the Judgment debtor has got means to pay the decree amount. It remains to be seen that in order to satisfy whether Judgment debtor has got means to pay the decree amount, filing of affidavit alone is not sufficient. It is got to be proved by adducing evidence both orally and documentary. It is only on the basis of the documents filed under the oral evidence adduced the court can come to the conclusion whether the Judgment debtor has got sufficient means to pay the decreetal amount or not."*

10. From the guiding principles laid down by the Hon'ble Apex Court in the above cited Judgments, simple default to discharge the amount is not enough, the petitioner has to prove bad faith in not satisfying the decreetal amount despite having sufficient means to pay the decree amount. And if the Judgment debtor has sufficient means the petitioner recouse is the remedy to attachment of the property and recover the amount by sale of the attached property and the order for detention of a person for not paying the decree amount is a violation of Article 21 of our Constitution.

11. In view of the aforesaid discussion, this court comes to the conclusion that

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the petitioner failed to establish the element of bad faith and the possession of sufficient means by the Judgment debtor to pay the decreetal amount by way of adducing sufficient oral and documentary evidence and hence is of considered opinion that the petition is devoid of merits and deserves to be dismissed.

In the result, this petition is dismissed without prejudice to the rights of the decree holder to work out his remedy in the manner known to law. No cost.

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