

(1975) 08 MAD CK 0030
In the Madras High Court

Athirubam

APPELLANT

Vs

Lahia Bi Ammal

RESPONDENT

Date of Decision : 29-08-1975

Acts Referred:

Citation : (1976) 89 LW 282 : (1976) 1 MLJ 432

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—I do not think that the learned Subordinate Judge was right in having directed the arrest of the Government servant who was admittedly receiving a total salary of Rs. 350 per month. The petitioner's case is that certain deductions are made towards his Provident Fund loan, and certain other attachments are being effected pursuant to other money decrees against him. All these factors were noticed by the learned Judge. But according to him, there was no proof of such deductions towards loan or deductions towards salary attachment. He ought to have given a further opportunity to the petitioner to produce such evidence. He ought not to have discountenanced them and held the view that there is no satisfactory evidence to establish the same. In any event, in the year of grace 1973 a salary of Rs. 350 even to a lower middle class family cannot be said to be an attractive one which could prompt a civil Court to issue a warrant of arrest in execution of a money decree if he fails to pay the same. It was in such circumstances, a division Bench of this Court in *Madhavan Nambiar v. Chaldean Syrian Bank Ltd.* (1955) 2 M.L.J. 121 : AIR 1955 Had. 409 set down a rule of equity and good conscience. Mack, J., Speaking for the Bench observed as follows :

The fixation of instalments after an enquiry into the means and the ability of the judgment debtor to pay in many cases is much fairer to the judgment-debtor who, whilst not being in a position to discharge the decree in full, can certainly pay something towards its discharge. The fixation of instalments helps to bridge the wide gulf between the dismissal of an execution petition for arrest on a

decree-holder failing strictly to discharge the onus resting on him Under the proviso to Section 51 and the commitment to prison of a judgment-debtor who while in a position to pay something simply cannot discharge the decree in full as he has no immediate means to do it.

While respectfully adopting the observations, I am of the view that this is a similar case in which the equitable jurisdiction of this Court should be exercised and the order of arrest set aside, giving a direction to the petitioner to pay the decree amount in instalments. The respondent has filed the execution petition for recovery of a sum of Rs. 6,670.65 due towards a decree. Taking all the circumstances into consideration, I direct that the petitioner should pay a sum of Rs. 100 per month towards the decree and in case of default of any one instalment, the respondent may take such steps as he may be inclined to realise the unpaid portion of the decree amount. The Civil Revision Petition is allowed. There will be no order as to costs.