

(1993) 08 MAD CK 0012
In the Madras High Court

Jagadeeswaran

APPELLANT

Vs

Federal Bank, Pollachi Branch and Another

RESPONDENT

Date of Decision : 11-08-1993

Acts Referred:

Citation : (1994) 1 MLJ 297

Hon'ble Judges : Pratap Singh, J

Bench : Division Bench

Judgement

Pratap Singh, J.—This civil revision petition is directed against the order in E.P.No.523 of 1984 in O.S. No. 1155 of 1981 on the file of

District Munsif, Pollachi.

2. Short facts are: The 1st respondent had filed suit against the revision petitioner, the second respondent and one Padmavathi, arraying them as

defendants 2,3 and 4 respectively and obtained money decree. To realise the decree debt, the 1st respondent had filed E.P.No.523 of 1984,

praying for arrest of the revision petitioner and the 2nd respondent Raghavan. Later the 1st respondent had given up the 2nd respondent

Raghavan. The revision petitioner, who was the 1st respondent in the court below has resisted the execution petition, putting forth a plea of no

means. After enquiry, the learned District Munsif had rejected the plea of no means and ordered arrest. Aggrieved by the same, the 1st respondent

in the court below has come forward with this revision petition.

3. Mr. P.G. Xavier, the learned Counsel appearing for the revision petitioner, would submit that the properties maybe proceeded with 1st and then

if not satisfied, the revision petitioner may proceed with for arrest. I have heard Mr.G. Joseukkur, the learned Counsel appearing for the

respondent on the above aspects.

4. I have carefully considered the submissions made by rival counsels. The court below had relied upon Ex. A-1, which is a financial statement

given by the revision petitioner himself, duly signed by him. He has given his asset as 20 acres of coconut garden worth Rs. 1 lakh. That would

prove the means of the revision petitioner to pay the decree debt. His plea of no means cannot stand in the face of Ex. A-1. While so, the court

below is correct in finding means of the revision petitioner and ordering arrest. The submission that immovable properties may be proceeded with

first and then the revision petitioner may be proceeded with is untenable. It is the choice of the decree-holder viz., the 1st respondent to proceed

with against either the property or the person, that was permitted by law. While so, I am unable to accept the submission made by Mr.Xavier. The

order of the court below does not call for any interference.

5. In view of the above, this civil revision petition fails and shall stand dismissed. No costs.