

(2022) 09 KL CK 0051
In the High Court Of Kerala
Case No : CRP NO. 254 Of 2022

N K Kamaludheen

APPELLANT

Vs

Abdul Jaleel

RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:

Code of Civil Procedure, 1908 — Section 115, Order 21 Rule 37

Citation : (2022) 09 KL CK 0051

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : K.S.Bharathan, Alphin Antony, Aadithyan S.Mannali, Visakh Antony, Christine Mathew, Rance R., P.Ramachandran

Final Decision : Dismissed

Judgement

C.S Dias, J

1. The revision petitioner is the judgment debtor in E.P.No.51/2016 in O.S.No.18/2014 of the Court of the Subordinate Judge, Chavakkad. The respondent is the decree holder. The respondent filed the above execution petition to execute a compromise decree dated 01.10.2015 passed in the above suit. As per the decree, the revision petitioner was directed to pay an amount of Rs.45,00,000/- within 9 months from 01.10.2015 and in default to pay interest @ 12% per annum. A charge was also created on the immovable property comprised in re-survey No.25/7B of Pavaratty Village belonging to the revision petitioner and his wife. The execution court, by order dated 16.01.2019, found that the revision petitioner has sufficient means to discharge the decree debt. The said order was confirmed by this Court in O.P.(C) No.585/2019. In the meantime, the respondent had filed E.P.No.28/2019 to attach and sell the properties of the revision petitioner. When the execution petition was posted for production of draft sale proclamation, the revision petitioner filed O.P.(C) No.2884/2019 before this Court and contended that the respondent could not simultaneously proceed against the person and property. This Court directed the

warrant of arrest issued against the revision petitioner to be kept in abeyance till the sale takes place in E.P.No.28/2019. An error had crept in the judgment in OP(C) No.2884/2019. The respondent had preferred R.P.No.90/2020 contending that there was misrepresentation on the part of the revision petitioner in relation to the amount that was deposited. But, this Court, by order dated 10.08.2022, closed R.P.No.90/2020, on the submission by the learned counsel appearing for the respondent that E.P.No.28/2019 was dismissed as not pressed, without prejudice to the right of the respondent to proceed with E.P.No.51/2016. Then, the execution court, by order dated 24.06.2022, issued a warrant of arrest against the revision petitioner on the ground that E.P.No.28/2019 was dismissed as not pressed. The course adopted by the court below in issuing a warrant of arrest against the petitioner is erroneous, improper and irregular. Hence the revision petition.

2. Heard; Sri.K.S.Bharathan, the learned counsel appearing for the revision petitioner and Sri.Ramachandran, the learned counsel appearing for the respondent.

3. The bone of contention of the learned counsel appearing for the revision petitioner is that the execution court had not conducted any enquiry as contemplated under Order XXI Rule 37 of the Code of Civil Procedure, 1908 (in short, Code) before issuing the warrant of arrest against the revision petitioner. Thus, the proceedings leading to the issuance of the warrant is vitiated and illegal, and is liable to be set aside.

4. The above submission was countered by the learned counsel appearing for the respondent contending that the enquiry had already been completed by the execution court and it was found that the revision petitioner has the means. The said finding was confirmed by this Court in OP(C) No.585/2019. There is no necessity to conduct a second enquiry under the Code. The revision petition is groundless and is liable to be dismissed.

5. The point is whether there is any error or irregularity in the impugned order.

6. Undisputedly, the suit was decreed as per the terms of compromise as early as on 01.10.2015. The respondent put the decree to execution by first filing E.P.No.51/2016, seeking personal execution. Subsequently, the respondent also filed E.P.No.28/2019 to attach and sell the properties of the revision petitioner and his wife. The execution court had conducted an enquiry as contemplated under Order XXI Rule 37 of the Code in E.P.No.51/2016 and found that the revision petitioner has the means to pay the decree amount. The said order was unsuccessfully challenged before this Court in O.P.(C) No.585/2019. However, this Court directed the execution of the warrant to be kept in abeyance for a period of two months, to enable the revision petitioner to pay off the entire decree debt, if not, the execution court to proceed with the execution.

Subsequently, the respondent filed E.P.No.28/2019 which was again challenged before this Court. This Court in O.P.(C) No.2884/2019 directed the warrant of

arrest to be kept in abeyance till the sale takes place in E.P.No.28/2019. Admittedly, E.P.No.28/2019 was dismissed as not pressed by the respondent. With the dismissal of the said execution petition, E.P.No.51/2016 has revived and can be proceeded from the stage where it was stopped. Thus the judgment in O.P. (C) No.585/2019 has come into effect. It was in the above circumstances that the court below passed the impugned order issuing a warrant of arrest against the revision petitioner. There is no illegality, impropriety or irregularity in the impugned order warranting interference by this Court under Section 115 of the Code. The revision petition is groundless and is hence dismissed.