
(1995) 11 MAD CK 0067

In the Madras High Court

Case No : Civil Revision Petition No. 2704 of 1989

Saravanan and Others

APPELLANT

Vs

Annamalai

RESPONDENT

Date of Decision : 13-11-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 59

Citation : (1996) 1 CTC 21 : (1996) 1 LW 91 : (1996) 1 LW 90

Hon'ble Judges : Thanikkachalam, J

Bench : Single Bench

Advocate : M. Liagat Ali, for the Appellant; S. Ganesan, for the Respondent

Final Decision : Allowed

Judgement

Thanikkachalam, J.—The decree-holders are the petitioners herein. The decree-holders/plaintiffs filed O.S. No. 190 of 1980 on the file of the District Munsif, Srivaikuntam to recover a sum of Rs. 1,275.50/- from the judgment-debtor. E.P. No. 158 of 1987 was filed. In the said petition, the respondent/judgment-debtor pleaded that he was in the Military service from 1953 to 1973 and he took part in the wars and he was inflicted with injuries. He was hospitalised for six months, and therefore he is not in a fit state of health to be detained in the civil prison. The Execution Court, after considering the evidence, both oral and documentary, came to the conclusion that the judgment-debtor is not in a fit state of health to be detained in the civil prison. Therefore, by applying the provisions of Section 59 of the Code of Civil Procedure, dismissed the execution petition. It is against that order, the present revision has been preferred by the decree holders.

2. The learned counsel appearing for the petitioners herein submitted that the Execution Court was not correct in dismissing the execution petition by applying the provisions of Section 59 C.P.C. According to the learned counsel, Section 59 C.P.C, would apply only after warrant is issued. In the present case, no such warrant was issued. It was further submitted that the Execution Court has not considered the means of the judgment- debtor to pay the decree amount. For

these reasons, it was submitted that the Execution Court was not correct in dismissing the execution petition.

3. On the other hand, the learned counsel appearing for the judgment-debtor/respondent herein submitted that since the judgment-debtor was wounded when he was in the Military service, he is not in a fit state of health to be kept in civil prison. Even if the warrant is issued for arrest, that should be cancelled considering the condition of health of the judgment-debtor. Therefore the Execution Court was correct in dismissing the execution petition. It was further submitted that the decree-holders have not stated anything about the means of the judgment-debtor to pay the decree debt. Therefore, at this stage, the learned counsel submitted that the decree-holders cannot plead that the judgment-debtor is having means to pay the decree debt.

4. The fact remains that the suit was filed to recover a sum of Rs. 1,275.50/- . The judgment-debtor is a retired Army man. He was in the Army for twenty years. He took part in the War between China and India. War in Bangladesh and in the War between India and Pakistan. He was wounded and he was hospitalized for six months. Therefore, according to the Execution Court, he is not in a fit state of health to be kept in civil prison. Section 59, C.P.C, would apply at any time after a warrant for the arrest of the judgment-debtor has been issued. Section 59 is the provision for release on the ground of illness. But in the present case, no such warrant was issued to arrest. In anticipation of the arrest warrant the execution petition cannot be dismissed u/s 59 C.P.C. Further, before ordering arrest, the Court should also examine the means of the judgment-debtor to pay the decree debt. If the judgment-debtor has means and evading the payment of the decree amount, then arrest can be ordered. In the present case, neither the decree-holders pleaded that the judgment-debtor is having means to pay the decree amount; nor the Court gave a finding on this aspect. Accordingly, the order passed by the Execution Court is set aside and the Execution Court is directed to dispose of the aforesaid E.P. No. 158 of 1987, after ascertaining the means of the judgment-debtor. The parties are at liberty to adduce evidence, both oral and documentary in order to substantiate their respective case. In that view of the matter, this civil revision petition is allowed and the aforesaid E.P. No. 158 of 1987 in O.S. No. 190 of 1980 is remitted to the Execution Court for fresh disposal. The Execution Court is directed to dispose of the abovesaid execution petition in the light of the observations contained above No costs.