
(1951) 08 MAD CK 0021

In the Madras High Court

Case No : Civil Revision Petition No. 6 of 1951

S.K. Kuttalalingam Pillai

APPELLANT

Vs

S.V.N. Chinnakannu Pillai

RESPONDENT

Date of Decision : 27-08-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 51

Citation : AIR 1952 Mad 18 : (1951) 2 MLJ 588

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : K.S. Ramabhadra Aiyar, for the Appellant; S. Ramachandra Aiyar, for the Respondent

Judgement

Panchapakesa Ayyar, J.—This is a petition to revise the order of the Subordinate Judge of Tuticorin dated 9-12-1950, in E. P. No. 130 of

1950, in S. C. S. No. 408 of 1949, directing arrest of the petitioner for recovering about Rs. 1000 due from him. The learned Subordinate Judge

passed an order on 28-9-1950, as follows:

P. W. 1. Examined. Ex. A. 1 marked. For payment by 10-11-1950 without deciding about the liability (evidently for arrest)". On 10th November

1950, the judgment-debtor was absent, and the matter was adjourned to 20th November 1950, and then to 24th November 1950, when we find

the note, "'Rs. 50 paid. Balance to be paid by 9-12-1950'". On 9th December 1950; the only order is: "'Judgment-debtor absent. Arrest by 9-1-

1951.

2. The judgment-debtor's vakil is said to have been present in Court. The learned Sub-Judge gave "no reason whatever" for ordering arrest. Nor

did he "'decide about the liability for arrest'" u/s 51, C. P. C. as he was bound to

do and as he had originally intended to do (see note on 28th September 1950). "In Venkatasubba Rao v. Sriramulu", 1949 Mad W N 49 I have held that a Court must record its reasons in writing regarding its being satisfied, under 8. 51 C.P.C. as amended, that the judgment-debtor had rendered himself liable to be "arrested and sent to civil jail", on any one of the grounds mentioned therein, before directing his arrest and detention in civil jail, and that "reasons must be given every time a man is ordered to be arrested and in every proceeding where he is ordered to be arrested." The mere fact that Rs. 50 (out of Rs. 1000) were paid by this petitioner on 24th November 1950 cannot, by itself, prove that the man had means to pay the entire Rs. 1000 and was still fraudulently withholding payment. Nor will the absence of the judgment-debtor in Court on 9th December 1950 be any valid reason for not writing out the reasons for ordering his arrest, especially when his vakil was present, and his arguments could have been heard and considered. A Bench of this Court, consisting of Subba Rao J. and myself, has in "Paramanandaswami v. A. K. Shanmugam Pillai", 1949 Mad W N 294 again emphasised the need for strictly observing the provisions of Section 51 C. P. C. It is really surprising that the learned Sub-Judge should have, after these rulings, passed his bald order for arrest. The mandatory provisions of law, and the liberty of person of citizens, Should not be treated lightly thus. It is obvious that the lower Court's order must be set aside and the matter remanded to the lower Court for hearing the Judgment-debtor, or giving him an opportunity of being heard, and passing a fresh order of arrest, if justified, giving full reasons u/s 51 Civil procedure Code, and I do accordingly In the circumstances of this case, all the parties to this civil revision petition will bear their own costs.