

E.A.224/2023
in E.P.16/2019

IN THE COURT OF THE SUBORDINATE JUDGE, PERUMBAVOOR

Present:- Sri.Johnson M.I, Sub Judge

Saturday, the 20th day of January, 2024 / 30th Pousha 1945

E.A.No.224/2023 in E.P.No.16/2019 in O.S.No.43/2016

Review Petitioner / Judgment Debtor:-

Thomas K Mathew, S/o Kottanathu Veetil Mathai,
aged 52 years, Mattappalli Purayidathil. Ezhiram Kara,
Ayikaranadu North Village, Ernakulam District.

By Adv.K.V. Gopakumar

Respondent / Decree Holder :-

Johny Thomas, S/o Thomas, aged 53 years,
Ayikkarakkudy House, Vengola Kara,
Arakkappady Village, Ernakulam District.

By Adv. P.T. Geeverghese

This Petition is filed under Sections 114 and 151 read with Order XLVII Rule 1 of Code of Civil Procedure for review of the order in the E.P dated 23.08.2023 and is coming on for final hearing on 16.01.2024 in the presence of the above counsels and the court on 20.01.2024 passed the following :-

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ORDER

This is a petition filed by judgment debtor under Order 47 Rule 1 CPC for review of the order in the E.P. dated 23-08-2023.

2. Decree holder filed serious objection to this petition.
3. I heard the counsel for both sides and perused the case records.
4. Suit was for realisation of money. Suit was decreed on 31-01-2019 directing the defendant to pay a sum of Rs.41,94,315/- with 12% interest per annum on the principal amount of Rs.40 lakh from the date of suit till the date of decree and thereafter with 6% interest per annum till its realisation with cost to plaintiff. Thereafter, decree holder filed E.P.16/2019 for arrest and detention of judgment debtor in civil prison after alleging that, judgment debtor has sufficient means to pay the decree debt, but, he is willfully omitting to pay the same. While the E.P was pending, judgment debtor filed RFA 287/2019 before Hon'ble High Court of Kerala against the judgment and decree and that RFA was dismissed on 30-03-2023. Later on, on the evidence, E.P was allowed on

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23-08-2023 and judgment debtor was ordered to be detained in civil prison for 3 months for willful non payment of decree debt. Thereafter, arrest warrant was issued against judgment debtor. While so, judgment debtor filed this petition for reviewing the order dated 23-08-2023.

5. In this petition, judgment debtor relied on the decision of Hon'ble High Court of Kerala in "**Anilkumar v. Divya (2023 (3) ILR 631)**" and argued that, judgment debtor can be arrested and detained in civil prison only after proceeding against the property belonged to judgment debtor which was attached before judgment in the suit. According to judgment debtor, decree holder has to firstly proceed against the property belonged to judgment debtor which was attached before judgment in the suit and if the E.P amount is not realised in full, decree holder is entitled to proceed against the person of judgment debtor to arrest him and detain in civil prison. With the said allegations, judgment debtor has prayed for reviewing the order dated 23-8-2023 in the E.P ordered arrest and detention of judgment debtor in civil prison and to

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direct the decree holder to proceed against the property belonged to judgment debtor which was attached before judgment.

6. It is true that, property belonged to judgment debtor was attached before judgment and the attachment is still in force. As per the argument of counsel for judgment debtor, decree holder has to firstly proceed against the property and decree holder is not entitled to proceed against judgment debtor for his arrest and detention without proceeding against the property belonged to judgment debtor.

7. In **“Padrauna Raj Krishna Sugar Works Ltd. and Others v. Land Reforms Commissioner, U. P. and Others (1969 KHC 425)”**, it was held by Hon’ble Apex Court that, *“The power exercisable by the Collector in recovering arrears of income tax which are recoverable as arrears of land revenue are, it is clear, not restricted to the Land Revenue Code : the Collector is entitled to exercise all the powers of a Civil Court for the purpose of recovery of an amount due under a decree under the Code of Civil Procedure, and the Code of Civil Procedure imposes no obligation to recover the dues by sale of movables or by arrest and detention of the defaulter before immovable property may be attached. S.51 of the Code of Civil Procedure provides :*
“Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree holder, order execution of the decree -
(a) by delivery of any property specifically decreed;

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simultaneous proceedings for execution of the decree. O.21 R.30 of the Code reads as under:

"30. Decree for payment of money.-- Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment - debtor, or by the attachment and sale of his property, or by both."

O.21 R.21 of the Code states as follows:

"21. Simultaneous execution.-- The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment - debtor."

A bare perusal of the provision contained in O.21 R.30 of the Code would reveal that simultaneous execution of a decree for payment of money, including a decree for the payment of money as the alternative to some other relief, against the property and person of the judgment - debtor is permissible.

7. In Shyam Singh vs Collector, District Hamirpur, 1993 KHC 1018 : 1993 Supp (1) SCC 693 the Apex Court has held as follows:

"It has been said the difficulties of a litigant "begin when he has obtained a decree". It is a matter of common knowledge that far too many obstacles are placed in the way of a decree holder who seeks to execute his decree against the property of the judgment debtor. Perhaps because of that there is no statutory provision against a number of execution proceedings continuing concurrently. S.51 of the Code gives an option to the creditor, of enforcing the decree either against the person or the property of the debtor; and nowhere it has been laid down that execution against the person of the debtor shall not be allowed unless and until the decree holder has exhausted his remedy against the property".

(emphasis supplied)"

10. In **"M/s. St. Sebastians Kuries And P. Ltd. v. Mukundan and Others (1991 KHC 656)"**, it was held by Hon'ble High Court of Kerala that, *"2. Counsel for the revision petitioner submitted that the impugned order is*

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thoroughly wrong and as the Munsiff has failed to exercise jurisdiction vested in him this Court has necessarily to interfere under S.115 CPC. There is considerable force in the above contention. It is open to any decree holder to take steps in execution to realise the decree amount as provided under O.21 R.30 CPC. O.21 R.30 provides that every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment debtor, or by the attachment and sale of his property or by both. From a plain reading of O.21 R.30 it is clear that the decree holder is entitled to execute the decree by seeking the aid of the Court by detention of the judgment debtor in the civil prison or by attachment and sale of his property. It is open to the decree holder to have recourse to either of the remedies or by taking steps simultaneously to have the judgment debtor arrested and detained in the civil prison or by attaching his property and bringing it to sale through the aegis of the Court. Merely because property of the first defendant was attached, the right of the decree holder to execute the decree by seeking the arrest of the judgment debtor and detention in the civil prison as provided under O.21 R.30 cannot be denied. As it is always open to the decree holder to execute the decree for money due to him from the judgment debtor, the executing Court cannot insist that the decree holder should have recourse only to one of the remedies at a particular time. In other words, merely because the property of the judgment debtor has been attached decree holder's remedy by way of arrest of the judgment debtor cannot be denied. As O.21 R.30 allows simultaneous execution both against the property and person of the judgment debtor, the executing Court was not justified in dismissing the execution petition.”

From abovesaid decisions, it is very much clear that, decree holder is entitled to proceed simultaneously against the property and person of judgment debtor for realisation of the decree amount. Decree holder is entitled to proceed against the judgment debtor for his arrest and detention even without proceeding against the property belonged to judgment

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debtor. Hence, abovesaid argument put forwarded by the counsel for judgment debtor that, decree holder is duty bound to proceed against the property of judgment debtor in the first instance and only after that if the decree amount is not realised in full, decree holder is entitled to proceed against the property and person of judgment debtor, is not sustainable.

11. In considering the above discussion, it is only to be held that, there is nothing before this court to review the order dated 23-08-2023 and this petition is only to be dismissed.

In the result, this petition is dismissed. No cost.

Dictated to the Confdl.Asst., transcribed and typed by her, corrected by me and pronounced in the Open court on this the 20th day of January, 2024.

Sd/-
JOHNSON M.I
SUB JUDGE

APPENDIX :- NIL

Sd/-
Sub Judge

Akr
Compd.by.Pkm

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ORDER
Dated : 20-01-2024