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(1989) 12 MAD CK 0045

Madras High Court

Case No: None

Gokuldas

APPELLANT

Vs

Appandanatha Nainar

RESPONDENT

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**Date of Decision:** Dec. 11, 1989

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 37, Order 21 Rule 40, 51

**Citation:** (1990) 1 LW 21 : (1990) 1 MLJ 319

**Hon'ble Judges:** A. Abdul Hadi, J

**Bench:** Single Bench

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### Judgement

@JUDGMENTTAG-ORDER

A. Abdul Hadi, J.

The judgment-debtor has filed this civil revision petition against the order of arrest dated 17.3.1989 in E.P.No. 45 of 1988 on the file of the Sub-Court, Tindivanam. Out of the total decree amount of about Rs. 21,000, the judgment-debtor has been paying certain amounts, on several occasions, which I am told, in all comes to about Rs. 12,500. However, the court below has ordered arrest on 17.3.1989 by simply saying that "No substantial payment. "Arrest J.D."

2. I find from the certified copy of the above E.P. and the orders passed thereon on several days, culminating in the above said order dated 17.3.1989 that in the said E.P. for arrest and detention of the petitioner judgment-debtor herein in the Civil Prison pursuant to the notice, ordered, he appeared through Counsel and he was making several payments to the extent of Rs. 12,500, and that finally on the ground that no substantial payment was made, arrest was ordered on 17.3.1989, as stated above, I think the said order dated 17.3.1989 is a misconceived one. After the respondent has appeared before the court and has been also making several payments as stated above, no order of arrest could be made. If at all the executing Court could make necessary enquiries u/s 51, Proviso, CPC and if the Court is satisfied, that the requirements of the said provision are

satisfied it could pass an order for the detention of the judgment-debtor in Civil Prison. No order of arrest can be made at such a stage. After the appearance of the judgment-debtor before the Court pursuant to the notice under Order 21, Rule 37, CPC Order 21, Rule 40 CPC says that the Court shall proceed to hear the decree holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the Civil Prison (emphasis is mine). At that stage the Court shall take into consideration the Proviso to Section 51, Civil Procedure Code, as stated above. But, in the present case, the Court below has not adopted that procedure, but instead, has chosen to simply say "No substantial payment". "Arrest J.D.". This is certainly not correct. The stage in which arrest can be ordered has already gone. That initial stage arises only when Order 21, Rule 37, Proviso of Civil Procedure Code, applies, that is, when with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court. In the present case, the next stage of committing the judgment-debtor to civil Prison alone should have been considered by the court below at the time when the impugned order was wrongly passed.

3. So, I set aside the impugned order and remand the case back to the executing Court for adopting the above said procedure prescribed under Order 21, Rule 40, CPC read with Section 51, Proviso of Civil Procedure Code. Hence, the Civil Revision petition is allowed. No costs.