

**(2013) 12 MAD CK 0103**

**Madras High Court**

**Case No:** CRP. NPD. No. 1598 of 2010 and M.P. No. 1 of 2010

T. Veerasamy

APPELLANT

Vs

A. Venkatachalam

RESPONDENT

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**Date of Decision:** Dec. 18, 2013

**Citation:** (2014) 1 LW 485

**Hon'ble Judges:** K. Kalyanasundaram, J

**Bench:** Single Bench

**Advocate:** V.C. Selvasekaran, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

K. Kalyanasundaram, J.

This Civil Revision Petition is directed against the order dated 30.7.2009 passed by the learned Subordinate Judge, Mettur, Salem District made in R.E.P. No. 88/2007 in O.S. No. 156/2002. The petitioner is the defendant in O.S. No. 156/2002 on the file of the Sub Court, Mettur. The respondent filed the said suit for recovery of sum of Rs. 32,600/- from the petitioner herein. The suit was decreed on 28.11.2003.

2. Thereafter, the respondent filed an Execution Petition in REP. No. 88 of 2007 for recovery of the amount by way of arrest and detention of the judgment debtor in the civil prison. The petitioner filed his counter by contending that instead of proceeding against the property of the judgment debtor, the decree holder filed the Execution Petition for arrest and detention of the judgment debtor in the civil prison, which is not sustainable in law. The learned Sub Judge, Mettur, after considering the objections raised by the Judgment debtor, passed an order, directing the judgment debtor to make payment by 14.8.2009. Aggrieved by the order, the judgment debtor has filed the present civil revision petition before this Court.

3. Heard Mr. V.C. Selvasekaran, learned counsel for the petitioner/judgment debtor.

4. Learned counsel for the petitioner submitted that the Execution Petition filed for arrest of the judgment debtor and detaining him in the civil prison, is not maintainable in law, without taking steps for attachment of movable or immovable property of the judgment debtor. The decree holder cannot proceed against the petitioner for his arrest and detention in the civil prison. The Executing Court, instead of directing the petitioner to pay the decree amount by 14.8.2009, ought to have dismissed the execution petition as not maintainable.

5. Learned counsel for the petitioner has also relied upon the judgment of this court reported in [K.M. Kannu Gounder Vs. Mahboob Ali Sahib and Amanullah](#), to substantiate his contention.

6. It is seen from the records that the suit filed by the respondent for recovery of money, was decreed on 28.11.2003 and to recover the decree amount, the respondent filed the execution petition. There is no bar under the CPC for the decree holder to file execution petition for arrest and detention of the judgment debtor to recover the decree amount.

7. In [A.K. Subramania Chettiar Vs. A. Ponnuswami Chettiar](#), this Court has held that it is open to the decree holder to proceed against the judgment debtor simultaneously to recover the amount by arrest and detention of the judgment debtor in civil prison and also to proceed against the property.

8. In [Jagadeeswaran Vs. Federal Bank, Pollachi Branch and Another](#), this Court has held that it is the choice of the decree holder viz., the 1st respondent to proceed with against either the property or the person, that was permitted by law.

9. In the judgment reported in [Ganesh Vs. Sankaran and Another](#), this court, referring to the judgment of the Hon"ble Apex Court in [State Bank of India Vs. Messrs. Indexport Registered and others](#), has held that it is for the decree holder to decide and choose the mode of execution and he cannot be compelled to go in, for a particular mode.

10. In view of the judgments of the Hon"ble Apex court and this Court, the contention of the petitioner that the decree holder has to proceed only against his property and he cannot file a petition for arrest and detention is not sustainable in law. I could see no infirmity or illegality in the order passed by the learned Subordinate Judge, Mettur. In the result, the civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.