

THE HON'BLE SRI JUSTICE K.C.BHANU

CIVIL REVISION PETITION No.5534 OF 2012

ORDER:

The Civil Revision Petition is directed against the order, dated 27.09.2012, in E.P.No.13 of 2010 in O.S.No.453 of 2004 on the file of the Junior Civil Judge, Piduguralla, whereunder and whereby, petition filed by respondent herein/decreed holder under Order XXI Rule 38 of the Code of Civil Procedure, 1908 (for short, "C.P.C.") for arrest and detention of the petitioner herein/judgment debtor and for realization of the decretal amount, was ordered.

2. Heard the learned counsel for the petitioner/judgment debtor.

3. Respondent herein filed O.S.No.453 of 2004 against the petitioner herein for recovery of amount and the same was decreed. In pursuance of the said decree, he filed E.P.No.13 of 2010 for arrest and detention of the judgment debtor and for realization of the decretal amount, and the same was ordered. Challenging the same, judgment debtor filed the present Revision Petition.

4. The aforementioned suit was decreed on 26.6.2005 against the judgment debtor. When the decree holder demanded repayment of the decretal amount, the judgment debtor failed to repay that amount. It is contended by the decree holder that the judgment debtor is doing real estate business and chit fund business and getting Rs.50,000/- per month and he is having capacity to discharge the entire decretal amount and therefore, he prays to arrest the judgment debtor. The judgment debtor filed counter denying the allegations made in the affidavit filed in support of the petition and contended that he is suffering from Blood Pressure and Hyper tension; that he is a diabetic patient for the last three years and he had no movable or immovable

properties of his own and hence, prayed to dismiss the execution petition.

5. On behalf of the decree holder, P.Ws.1 and 2 were examined and Exs.P-1 to P-3 were marked. On behalf of the judgment debtor, R.Ws.1 to 3 were examined and no documents were marked.

6. The trial Court, after considering the evidence on record, came to a conclusion that though the judgment debtor is having means to pay the decretal amount, he is evading to pay the decretal amount and therefore, ordered for his arrest. Challenging the same, the judgment debtor filed the present Civil Revision Petition.

7. Learned counsel for the petitioner/judgment debtor contended that the petitioner has no means to pay the decretal amount; that there are no grounds to arrive at a conclusion that the judgment debtor refused to pay the decretal debt; that there are no movable or immovable properties in the name of the petitioner to discharge the decretal amount and hence, he prays to admit the Civil Revision Petition.

8. Under Order XXI Rule 37 C.P.C., where an application is for execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment debtor, who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause as to why he should not be committed to the civil prison. The provision as to issuance of show cause notice before ordering arrest and detention of the judgment debtor is silent in nature and has been enacted with a view to afford protection to the honest judgment debtors and to extend them an opportunity to comply with the decree. Two requirements are to be satisfied for arresting and sending the

judgment debtor to civil prison in execution of the money decree. Firstly, the judgment debtor is having sufficient means to pay the decretal amount. Secondly, judgment debtor is willfully or wantonly avoiding to pay the decretal amount. The provisions relating to arrest and detention of the judgment debtor are to protect and safeguard the interests of the decree holder. If the judgment debtor has means to pay and still he refuses or neglects to honour his obligations, he can be sent to civil prison.

9. The evidence of P.W.1 would clearly go to show that the judgment debtor is doing money lending business and chit funds business and he has got movable and immovable properties. Therefore, he has got capacity to pay the decretal amount. A perusal of Ex.P-1 would clearly go to show that the judgment debtor owns a residential house and it is leased out to tenants. P.Ws.2 and 3 supports the case of P.W.1. Except giving suggestions, nothing has been elicited to discredit the testimony of P.Ws.1 to 3. Coming to the evidence of judgment debtor, he simply stated that he does not have the means to pay the decretal amount and he does not have the movable or immovable properties. The evidence of R.Ws.2 and 3 would go to show that the judgment debtor has no means to pay the decretal amount and that he is working as a Pastor, but their evidence would clearly go to show that he is having Ac.0.02 cents of house site, which contains a house, and a motor bike worth about Rs.60,000/- to Rs.70,000/-. Therefore, he is having means to pay the decretal amount. Though the decree was passed on 26.6.2005 for a sum of Rs.68,800/- together with interest and costs, the judgment debtor has not evinced any interest to pay that amount. The judgment debtor has not given any reasons for not paying even part of the decretal amount when the decree was passed in the year 2005. Not paying the decretal amount till the date of arrest itself indicates that there are no *bona fides* on the part of the judgment debtor and he was trying to

evade the payment though he was having means to pay that amount. Therefore, the order of the trial Court needs no interference by this Court. However, the said order can be kept under abeyance to enable the petitioner to pay the decretal amount together with interest and costs within a period of three (3) months from today. The petitioner/judgment debtor is directed to pay the entire decretal amount in lumpsum or in instalments within three (3) months from today. If the petitioner/judgment debtor fails to pay the decretal amount within three months from today, as indicated above, the respondent/deGREE holder is at liberty to pay batta before the Executing Court for causing arrest and detention of the petitioner in civil prison. Registry is directed not to entertain any application for "Extension of time" or "For being mentioned" in this regard.

10. With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE K.C.BHANU

Date: 06.02.2015
AMD

THE HON'BLE SRI JUSTICE K.C.BHANU

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