

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.2498 of 2010

ORDER:

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This Civil Revision Petition is filed challenging the order dt.21-04-2010 in E.P.No.1 of 2007 in O.S.No.6194 of 2001 of the VII Junior Civil Judge, City Civil Court, Hyderabad.

2. The said suit was filed by respondent against petitioner for eviction, arrears of rent and mesne profits from November, 2001 till delivery of possession.

3. The said suit was decreed on 10-09-2003. A.S.No.37 of 2003 was filed by petitioner before the XIII Additional Chief Judge, City Civil Court, Hyderabad. The said appeal was also dismissed.

4. E.P.No.1 of 2007 was filed for recovery of arrears of rent of Rs.43,200/- and mesne profits of Rs.1,30,000/- for 26 months and costs, totaling to Rs.1,79,850/- and seeking arrest of the petitioner under Order XXI Rule 37 C.P.C. It was specifically alleged that petitioner was having sufficient means since he was practicing as an Advocate, that he failed to comply with the decree passed

by the Court, and he is liable to be sent to a civil prison.

5. Counter affidavit was filed by petitioner opposing the said application contending that the E.P. filed is misconceived and is liable to be dismissed. It was contended that the petitioner had delivered vacant possession along with key of the suit schedule property on

11-12-2003 in E.P.No.282 of 2003 on condition of the respondent foregoing the amounts due to her under the decree and giving a go-bye to the same, the E.P. has been filed.

6. Before the Court below, the Decree-Holder was examined as P.W.1 and the petitioner examined R.Ws.1 to 3.

7. By order 21-04-2010, the Court below allowed the E.P. It held that a sum of Rs.20,000/- was deposited to the credit of the E.P. by the J.Dr. during pendency of the E.P.; that respondent has contended that the petitioner is a practicing Advocate earning Rs.10,000/- p.m. and having property at Aliabad, but the petitioner contended that he is assisting the Senior Counsel and getting salary of Rs.5,000- p.m. and did not have the means to pay the decretal amount; at the time of cross-examination of D.Hr.,

the petitioner/J.Dr. requested that he is ready to pay the decretal amount and sought time to cross-examine P.W.1 on 14-02-2008; thereafter a memo with a sum of Rs.20,000/- was deposited to the credit of E.P.; the petitioner had not filed the statement of account of his bank account; and the plea of petitioner that respondent had agreed to forego arrears and mesne profits, cannot be believed since R.W.2 had deposed that there was no discussion with regard to payment of money. It held that petitioner had admitted that his children are studying in Sujatha High School situated at Abids, which is located in the center of Hyderabad city, and since he has paid only Rs.20,000/- during pendency of the E.P., he is still liable to pay the balance amount of Rs.1,59,850/-. It therefore held that he had sufficient means to pay the decretal amount but failed to pay it.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner Sri N.Venkatesh contended that certain negotiations with the respondent have occurred and the matter is likely to be settled; that petitioner is only an Advocate with a very small income and would not be in a position to satisfy the decree, and the Court below erred in directing that he be sent to civil prison.

10. I am unable to agree with the said submissions. Firstly mere possibility of a settlement with respondent is no ground to grant stay of Execution Petition when petitioner has no *prima facie* case. The petitioner is admittedly an Advocate and he is educating his children in Sujatha High School situated at Abids, Hyderabad. He has not filed the statement of his bank account to show the income he is earning. He has been able to pay a sum of Rs.20,000/- in 2008. The suppression by petitioner of his bank account is a ground to draw an adverse inference against him that if it is disclosed it would show his capacity to pay the decretal amount. Also the suit itself was filed in December, 2001 and the decree was passed therein on 10-09-2003. The E.P. was filed for arrest of petitioner in 2007 and today we are in August, 2015. Thus about 14 years have elapsed from the date of decree and about 5 years have elapsed from date of order in the E.P. No doubt, Rs.20,000/- was paid by petitioner during pendency of the E.P. and a further sum of Rs.60,000/- was deposited pursuant to the order dt.23-06-2010 in C.R.P.M.P.No.3348 of 2010. Thus, in the last 14 years, the petitioner has paid only Rs.80,000/- and total liability is Rs.1,79,850/-.

11. In this view of the matter, I do not find any merit in the

Revision. Four (04) weeks time from today is granted to petitioner to pay the balance decretal amount. In case such amount is not paid, the Civil Revision Petition shall stand dismissed and order the Court below to execute the decree can be enforced.

12. The Civil Revision Petition is disposed of with the above direction. No costs.

13. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 20-08-2015

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