

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

C.R.P.No.2684 of 2014

ORDER:

This Revision Petition is filed challenging the order dt.31-07-2014 in E.P.No.59 of 2011 in O.S.No.452 of 2009 of the II Additional Senior Civil Judge, Visakhapatnam, Hyderabad.

2. Petitioner herein is the J.Dr in the said suit. It appears that the petitioner borrowed under a promissory note dt.08-10-2007 a sum of Rs.1,70,000/- but did not repay the same. Therefore O.S.No.452 of 2009 was filed by the respondent before the II Additional Senior Civil Judge, Visakhapatnam against the petitioner. Suit was decreed on 08-11-2010. The petitioner did not challenge the decree in the suit.

3. The respondent then filed E.P.No.59 of 2011 under Order 21 Rule 37 CPC to issue an arrest warrant against the petitioner for realization of the decree debt. It is the specific contention of the respondent that the petitioner had sufficient means to discharge the decree debt since he is an employee in the postal department and draws more than Rs.10,000/- per month as salary and also has immoveable and moveable properties.

4. The petitioner filed a counter opposing the

E.P. stating that he is unemployed and did not have any income source to pay the decree amount. He claimed to be dependent on the pension of his widowed mother and stated that on account of financial stringency, he cannot satisfy the decree.

5. Before the Court below, the respondent examined himself as P.W.1 and marked Ex.P-1 while the petitioner examined himself as R.W.1.

6. Ex.P-1 is a certificate issued by the postal department showing that the petitioner was drawing a salary of Rs.12,796/- in December 2013. Having regard to Ex.P-1, the Court below disbelieved the contention of the petitioner that he was unemployed and did not have capacity to satisfy the decree. It held that the petitioner had suppressed the truth, taken a false plea that he is unemployed. It therefore held that the petitioner had sufficient capacity to discharge the decree debt, but he did not intentionally pay it. It therefore, issued arrest warrant against the petitioner.

7. Challenging the same, this Revision Petition is filed.

8. Heard Smt. S.A.V. Ratnam, learned counsel for the petitioner and Sri V.V.L.N.Sarma, learned counsel for the respondent.

9. Although the learned counsel for the

petitioner sought to contend that the petitioner had no means to satisfy the decree and is not liable to be arrested, she did not dispute the contents of Ex.P-1 which indicated that petitioner was employed as EDDDA in the postal department since 1991. Therefore, it is clear that the petitioner has taken a false plea that he is unemployed and suppressed the fact that he was employed in the postal department. Therefore, the finding of the Court below that the petitioner had capacity to satisfy the decree cannot be set aside.

10. In this view of the matter, I do not find any error of jurisdiction in the order passed by the Court below allowing E.P.No.59 of 2011.

11. Accordingly, the Civil Revision Petition is dismissed. However taking into account that the salary of the petitioner as shown in December 2013 is Rs.12,796/-, three months' time from today is granted to the petitioner to satisfy the decree. In case, the petitioner fails to do so, the order of the Court below shall be enforced against the petitioner. No costs.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-09-2015

kvr