

THE HON'BLE SRI JUSTICE K.C.BHANU

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CIVIL REVISION PETITION No.5141 OF 2012

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ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'CPC') is directed against the order and decree, dated 14.09.2012, in Execution Petition No.38 of 2010 in Original Suit No.133 of 1985 passed by the Principal Senior Civil Judge, Narasaraopet.

2. The brief facts that are necessary for disposal of the present revision may be stated as follows:

Respondent Nos.1 and 2 herein/deed holders filed the aforementioned suit for recovery of possession of A and B schedule properties. They also filed a petition for delivery of possession through the Court and filed I.A.No.2151 of 2005 for determination of mesne profits. After enquiry, the Court below passed a decree for mesne profits on 10.09.2008, whereunder the petitioner herein/judgment debtor No.4 was held to be liable to pay an amount of Rs.91,538/- to respondent Nos.1 and 2 herein. After passing of decree, respondent Nos.1 and 2 demanded the petitioner to pay the said amount, but he did not pay the same. Hence, they filed the Execution Petition for arrest and detention of the petitioner in civil prison.

3. The petitioner herein filed counter in the Execution Petition stating that he was aged about 65 years and he has been suffering from diseases coupled with old age and other financial problems; that he also sustained heavy loss in agriculture and he contacted debts from the State Bank of India to a tune of Rs.1,75,000/-; that he also indebted an amount of Rs.3,00,000/- to the villagers under various promissory notes and that he is not having means to pay the decretal amount.

4. The Executing Court, after considering the evidence of respondent Nos.1 and 2, came to the conclusion that the petitioner is having sufficient means to pay the decretal amount, but he intentionally evaded to pay the same and accordingly, ordered for arrest of the petitioner. Challenging the same, the present Civil Revision Petition is filed.

5. Learned counsel for the petitioner states that if reasonable time is granted to the petitioner, he is ready to pay the entire decretal amount covered under the Execution Petition and hence, he prays to suspend the impugned order.

6. The purpose of arrest under Order XXI Rules 37 and 38 CPC is not to punish the judgment debtor or to send him to civil prison. It is meant to give an opportunity to the judgment debtor to pay the amount due under decree. The finding of the Executing Court with regard to the means of the petitioner and his *bona fides* to pay the decretal amount remained unchallenged. There is no other reason to deviate from the finding of the Executing Court. However, considering the fact that petitioner has come forward with a *bona fide* statement that he would pay the entire decretal amount if reasonable time is granted, this Court accepts the proposal made by the petitioner.

7. Therefore, in the first instance, the petitioner shall pay 50% of the Execution Petition amount to respondent Nos.1 and 2 herein within a period of four (4) weeks from the date of receipt of a copy of this order and the remaining 50% amount within four (4) weeks thereafter. Till then the order of the Executing Court shall be kept under abeyance. If the petitioner fails to fulfil any one of the conditions as mentioned above, the order of the Executing Court shall be given effect to.

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

JANUARY 30, 2015

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THE HON'BLE SRI JUSTICE K.C.BHANU

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DATE:30.01.2015

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