

THE HON'BLE SRI JUSTICE K.C. BHANU

-

CIVIL REVISION PETITION No.648 OF 2015

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 24.12.2014, in Execution Petition No.33 of 2013 in Original Suit No.27 of 2008 passed by the Principal Junior Civil Judge, Chilakaluripet, whereunder and whereby, the petition filed by the respondent herein/decreed holder under Order XXI Rule 37 CPC to arrest and detain the petitioner herein/judgment debtor in civil prison for realisation of the E.P. amount and costs, was allowed with costs.

2. Respondent/decreed holder obtained a decree against the petitioner/judgment debtor on 05.05.2009 for an amount of Rs.90,783/- along with interest at the rate of 12% per annum. As the judgment debtor failed to pay that amount, the present Execution Petition was filed.

3. Heard the learned counsel for the revision petitioner.

4. To send a person to the civil prison for non-payment of the decretal amount, two requirements are to be satisfied viz., (i) judgment debtor has means to pay the decretal amount; and (ii) judgment debtor has been avoiding to pay that amount. To prove the said aspect, decreed holder himself was got examined as PW.1. It is clear from his evidence that the judgment debtor has got movable and immovable properties, but he has been avoiding to pay the same. It was elicited in the cross-examination of RW.2 that judgment debtor was having a Daba house, which costs

Rs.1,00,000/- and also land about 1 ½ cents, which costs about Rs.25,000/- per cent. Therefore, it is a case where the judgment debtor was having means to pay the decretal amount. Though the decree was passed on 05.05.2009, the judgment debtor has not evinced any interest to pay or discharge even part of the decretal amount. Therefore, it is a case where the judgment debtor is wilfully avoiding to pay the decretal amount. After considering these aspects, the Executing Court rightly ordered for arrest of the judgment debtor and to send him to the civil prison for not paying decretal amount. Therefore, that order needs no interference by this Court.

5. However, the decree holder is only interested to recover the entire amount due from the judgment debtor and if the judgment debtor is sent to jail, the decree holder will not get any amount in terms of the decree. Therefore, one more opportunity can be given to the judgment debtor to pay the entire amount due with interest within a period of four (04) months in four equated monthly instalments.

6. Accordingly, the order of the Executing Court is kept under abeyance for a period of four (04) months from today. The petitioner/judgment debtor shall pay the first instalment on or before 10th of April, 2015 and continue to pay the subsequent instalments on or before 10th in the months of May, June and July, 2015. If the petitioner/judgment debtor fails to fulfil any one of the conditions as mentioned above, the order the Executing Court shall be given effect to and the judgment debtor shall be sent to civil prison on payment of batta by the decree holder.

7. Since no adverse order is passed against the

respondent/decreed holder and the order, which is now passed, is beneficial to him, no notice is necessary.

8. Accordingly, 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.

JUSTICE K.C. BHANU

Date:27.02.2015
INL