

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.2524 of 2015

Date:03.07.2015

Between:

T.Prem Kumar,
S/o Joseph

.... Petitioner

And:

Batula Salman Raju,
S/o Luka Nandam

....Respondent

Counsel for the Petitioner: Sri Mahadeva Kanthrigala

Counsel for the Respondent: None appeared

The Court made the following:

ORDER:

This Civil Revision Petition arises out of order, dated 11.06.2015, in E.P.No.61 of 2014 in O.S.No.1224 of 2010 on the file of the learned IV Additional Senior Civil Judge, Guntur.

The petitioner is the judgment-debtor in O.S.No.1224 of 2010 on the file of the learned I Additional Junior Civil Judge, Guntur. As he failed to pay the decretal amount, the respondent has filed E.P.No.61 of 2014 for arrest and detention of the

petitioner in civil prison for non-payment of the decretal amount. The petitioner has filed a counter-affidavit, wherein he has admitted that he has retired as a Lecturer in Physics Department of A.C. College, Guntur, which was an aided college. The petitioner has, however, stated that he has no means to pay the entire E.P. amount at a time. Having considered the pleadings of both parties, the lower Court has allowed the E.P. and ordered arrest of the petitioner.

As rightly observed by the lower Court, having admitted the fact that he is a retired Lecturer and drawing pension, the burden lies on the petitioner to show that the quantum of pension along with his retirement benefits do not constitute sufficient means to pay the decretal amount.

Sri Mahadeva Kanthrigala, the learned counsel for the petitioner, strenuously submitted that the lower Court has not followed the procedure prescribed under Order XXI Rule-40 of the Code of Civil Procedure before ordering the petitioner's arrest.

I am afraid, I cannot accept this submission. Rule-40 of Order-XXI C.P.C. envisages that when a judgment debtor is brought before it, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity to show cause why he should not be committed to civil prison.

In the instant case, the petitioner was given an opportunity to file counter-affidavit and accordingly, he availed the said opportunity by filing the counter-affidavit. The lower Court after considering the respective pleadings has passed the order under revision.

The learned counsel for the petitioner submitted that no oral evidence was recorded by the lower Court and that therefore this constitutes a procedural illegality.

I find no merit in this submission either, for, when the means of the judgment-debtor is not in dispute, it is not necessary for the decree-holder to produce any evidence on his side. It is not the pleaded case of the petitioner that he wanted to produce evidence on his side and that the lower Court has declined to permit him to do so. Nothing prevented the petitioner from adducing his own evidence.

As noted above, the petitioner himself has admitted the fact that he is a retired Lecturer drawing pension. He has raised a rather half-hearted plea of non-existence of his means to pay the entire E.P. amount at a time. From this plea, he has impliedly admitted that he has means to pay the decretal amount over a period of time and not in one lump sum.

If the petitioner had the intention of paying the decretal amount in reasonable instalments, nothing prevented him from doing so for the last three and half years from the time of passing of the decree i.e., 22.12.2011. The fact that the petitioner failed to pay any part of the decretal amount shows his *mala fide* intention of evading the debt.

It is highly regrettable that the petitioner, who served a noble profession such as teaching profession, evades the debt, suffers a decree and resists execution of the decree without paying the decretal amount.

For the above-mentioned reasons, I do not find any merit in the Civil Revision Petition and the same is, accordingly, dismissed.

At this stage, the learned counsel for the petitioner submitted that his client may be permitted to pay the

E.P. amount within two weeks.

Having regard to this request, the petitioner is granted two weeks' time from today for payment of the entire E.P. amount. The lower Court is directed not to take any steps to arrest the petitioner for a period of two weeks. If the petitioner fails to pay the entire E.P. amount within this period, the respondent shall be free to execute the order.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.3374 of 2015 is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

03rd July, 2015

Note:

Issue CC by 06.07.2015

B/o

DR