

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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+ CIVIL REVISION PETITION No.3618 OF 2014

% 06—03—2015

Kunkuntla Narsimha

...Petitioner

vs.

\$ Syed Zainulabuddin

... Respondents

!Counsel for the Petitioner : Sri M.Rama Rao

^Counsel for the Respondents : Sri M.Raja Malla Reddy

<Gist :

>Head Note :

? Cases referred

1. 2009 (5) ALT 304
2. 2015 (1) ALT 410
3. 2007 (3) ALT 689
4. AIR 1981 MADRAS 354
5. AIR 1986 ALLAHABAD 9
6. AIR 1980 SC 470
7. 1969 Ker LT 927

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3618 of 2014

ORDER:

This Civil Revision Petition is directed against the order dated 10.07.2013 in E.P.No.75 of 2013 in O.S.No.477 of 2004 passed by the learned Junior Civil Judge, Nalgonda District (for short, trial Court).

2. The judgment debtor in the suit for permanent injunction is the petitioner and the

decree holder is the respondent herein. The suit, O.S.No.477 of 2004 filed by the respondent, was dismissed on 16.03.2009 and the respondent preferred an appeal in A.S.No.48 of 2010 and the same was allowed by the learned I Additional District Judge at Nalgonda (for short, appellate Court) on 01.03.2012. The respondent filed E.P.No.75 of 2013 before the trial Court seeking arrest of the petitioner herein under Order XXI Rule 37 of the Civil Procedure Code (for short, Code) with the following averments.

“ The decree holder filed suit for the relief of perpetual injunction in respect of the suit schedule property against the judgment debtor herein vide O.S.No.477/2004 on the file of Junior Civil Judge, Nalgonda. It was dismissed on 16-03-2009. Against the said decree and judgment, the decree holder filed appeal before the Hon’ble 1st Addl. District Judge, Nalgonda vide A.S.No.48/2010. It was allowed and granted perpetual injunction against the judgment debtor herein in respect of the suit schedule property, restraining the J.Dr herein and his agents, servants and associates etc., as not to interfere with the possession of the decree holder in any manner. Even the passing of this decree and judgment against the J.Dr herein, the J.Dr continuing his illegal interference and trying to dispossess the decree holder from his house premises. The decree holder constructed a house in the suit plot during the pendency of the suit. The decree holder resisted the illegal interference of the J.Dr with the help of elders. The J.Dr is mustering his strength with the help of gunda elements and threatening and making several efforts for dispossession since 10th March, 2013.”

3. The petitioner herein remained *ex parte*. After examining the respondent herein as P.W.1, the following docket order was passed by the trial Court on 10.07.2013.

“ Heard the counsel for the petitioner, respondent received notices but did not contest the petition. He was set *ex parte*, the petitioner examined as PW-1 perused the averments and the evidence of the PW-1 they revealed that the petitioner is the decree holder of this E.P., and filed this suit for perpetual injunction in respect of the suit schedule property against the J.Drs., herein in vide O.S.No.477 of 2004, the said suit was dismissed on 16-03-2009 and the appeal by the petitioners herein it was allowed by the first Additional District and Sessions Judge, Nalgonda, in A.S.No.48 of 2010 granting perpetual injunction against the J.Drs., as on the basing of the decree against the J.Drs., they are continuing the illegal interference and trying to dispossess the petitioner for the schedule premises. As per the evidence of the PW-1 he resisted the illegal interference with the J.Dr., with the help of the elders. The J.Dr., is mustering strength with the help of goonda elements and threatening and making several efforts to dispossession since 10th March, 2013.

Therefore, in the above said circumstances, though the petitioner obtained decree against the respondents not to interfere them in the possession of the schedule property, but the respondent J.Drs., are continuing their illegal interference and trying to dispossess the petitioner, it is just and necessary to send the J.Dr., to prison for six months for violating the decree granted by the Hon’ble 1st Addl. Dist. Judge, Nalgonda in A.S.No.48 of 2010.”

Challenging the same, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioner submitted that no execution petition seeking arrest of the judgment debtor is maintainable under Order XXI Rule 37 of the Code. He relied on two decisions of this Court in **Sadhana Educational Society V. S.B.V.M. High School**^[1] and **Malle Ranga Reddy V. Thirunagaru Purushotham**^[2]. The learned counsel for the respondent, on the other hand, submitted that in view of the violation of decree of injunction, the application for arrest of the judgment debtor is maintainable.

5. The facts in this case are not in dispute. The respondent herein filed O.S.No.477 of 2004 against the petitioner seeking permanent injunction in respect of house plot No.1-A admeasuring 336.11 square yards, situated in survey No.409, Gollaguda Revenue Village, B.T.S. Locality, Nalgonda Town and District and the same was dismissed on 16.03.2009. Challenging the same, the respondent herein preferred A.S.No.48 of 2010 and the same was allowed on 01.03.2012. Similarly, the petitioner herein filed O.S.No.489 of 2004 on the file of the Court of Junior Civil Judge, Nalgonda against the respondent herein in respect of land of an extent of 336 square yards in survey Nos.407 and 408 within Ward No.5, Block No.8, situated at Gollaguda Revenue Village, B.T.S. Locality, Nalgonda Town and District. The said suit was decreed on 16.03.2009 and the respondent herein preferred A.S.No.49 of 2010 on the file of the Court of I Additional District Judge, Nalgonda and the same was dismissed on 01.03.2012. Both the decrees have become final. Now the respondent herein, who is the decree holder in O.S.No.477 of 2004, filed the present application for execution seeking arrest of the petitioner herein.

6. It is also not in dispute that Order XXI of the Code deals with execution of decrees. Now it has to be examined whether the first point raised by the learned counsel for the petitioner that the execution petition filed by the decree holder under Order XXI Rule 37 of the Code seeking arrest of the judgment debtor in respect of the immovable property is maintainable or not.

7. The relevant portion of Section 57 of the Code reads as follows:

“ **51. Powers of Court to enforce execution:-** Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

- a) by delivery of any property specifically decreed;
- b) by attachment and sale or by the sale without attachment of any property;
- c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
- d) by appointing a receiver; or
- e) In such other manner as the nature of the relief granted may require.”

8. The relevant portion of the Order XXI Rule 32 of the Code reads as follows:

“ **32. Decree for specific performance for restitution of conjugal rights, or for an injunction:-**(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

- (2).....
- (3).....
- (4).....

(5) Where a decree for the specific performance of a contract or for an injunction

has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.”

9. Rule 37 of Order XXI provides for arrest of the judgment debtor in case of execution of decree for the payment of money. Rule 11 of Order XXI prescribes the procedure for an application for execution of a decree. Sub-clause (ii) of Rule 11 (2)(j) of Order XXI was inserted by Act 104 of 1976 w.e.f. 01.02.1977, and after insertion, 11 (2)(j) reads as follows:

“ (j) the mode in which the assistance of the Court is required whether:-

- (i) by the delivery of any property specifically decreed;
- (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
- (iii) by the arrest and detention in prison of any person;
- (iv) by the appointment of a receiver;
- (v) otherwise, as the nature of the relief granted may require.”

10. Rules 30 to 36 of Order XXI come under the heading ‘mode of execution’ and a reading of them make it clear that civil prison is one of the modes of execution of decree for injunction. Hence, the contention raised by the learned counsel for the petitioner has no substance.

11. The next point that remains for consideration is, whether in the facts and circumstances of the case, the impugned order ordering detention of the petitioner in civil prison for a period of six months, is legal or not.

12. The respondent has not stated any reason except stating that judgment debtor is mustering his strength with the help of gunda elements and threatening and making several efforts for dispossession since March, 2013, as provided under Rule 11A of Order XXI of the Code. The trial Court recorded the same ground, without giving any finding with regard to the said allegation in the execution petition, supported by oral evidence given by the respondent herein as PW-1. It ordered detention of the petitioner for alleged violation of the decree granted by the appellate Court in A.S.No.48 of 2010. The detention of a party to the civil litigation has a serious consequence and has to be resorted very rarely since it violates human rights. This cannot be done in the absence of any finding as to the violation made by that person. Though the provisions exist for detention of a person for violating the decree of injunction, that power has to be exercised cautiously and in rarest of rare cases and only after recording a finding.

13. This Court in **Sadhana Educational Society's** case (1 supra), held that the liberty of a person can be taken away only in extreme cases, after necessary ingredients

prescribed by law are proved. In **Malle Ranga Reddy**'s case (2 supra), this Court, by relying on a judgment in **Koya Ranga Reddy V. Koya Narayana Reddy**^[3], held that unless the decree holder, by cogent and convincing evidence, proves the existence of the ingredients of Rule 32 Order XXI of the Code, the order of arrest cannot be made. The Judgments of the Madras High Court in **V.S.Alwar V. Gurusamy Thevar**^[4] and the Allahabad High Court in **Harihar Pandey V. Mangala Prasad Singh**^[5] are also to the same effect. Way back in the year 1980, the Hon'ble Supreme Court in **Jolly George Varghese V. Bank of Cochin**^[6], which arose out of Order XXI Rule 37, held that in the absence of *mala fides* and dishonesty on the part of the judgment debtor, who was not having means to pay, the arrest and detention of civil prison would be violative of Article 11 of International Covenant on Civil and Political Rights and Article 21 of the Constitution of India. The Hon'ble Supreme Court, speaking through Justice V.R.Krishna Iyer, reiterated the observations made in **Xavier V. Canara Bank Ltd.**^[7], wherein it was held as follows:

“...While considering the international impact of international covenants on municipal law, the decision concluded:

Indeed the construction I have adopted of S.51 C.P.C has the flavour of Article 11 of the Human Rights Covenants, Counsel for the appellant insisted that law and justice must be on speaking terms – by justice he meant, in the present case, that a debtor unable to pay must not be detained in civil prison. But my interpretation does put law and justice on speaking terms. Counsel for the respondent did argue that International Law is the vanishing point of jurisprudence it itself vanishing in a world where humanity is moving steadily, though slowly, towards a world order, led by that intensely active, although yet ineffectual body, the United Nations Organisation. Its resolutions and covenants mirror the conscience of mankind and insemminate, within the member States, progressive legislation, but till this last step of actual enactment of law takes place, the citizen in a world of sovereign States, has only inchoate rights in the domestic Courts under these international covenants.

While dealing with the impact of the Dicean rule of law on positive law, Hood Philips wrote – and this is all that the Covenant means now for Indian courts administering municipal law.

The significance of this kind of doctrine for the English lawyer is that it finds expression in three ways. First, it influences legislators. The substantive law at any given time may approximate to the “rule of law”, but this only at the will of Parliament. Secondly, its principles provide canons of interpretation which express the individualistic attitude of English Courts and of those Courts which have followed the English tradition. They give an indication of how the law will be applied and legislation interpreted. English Courts lean in favour of the liberty of the citizen, especially of his person; they interpret strictly statutes which purport to diminish that liberty, and presume that Parliament does not intend to restrict private rights in the absence of clear words to the contrary.”

14. The trial Court had not taken into consideration the provisions of the Code, more particularly Rule 11A of Order XXI and the binding decisions of this Court, while passing the impugned order. The trial Court had not even recorded a finding justifying the order of arrest.

15. In the circumstances, the impugned order dated 10.07.2013 in E.P.No.75 of 2013 in O.S.No.477 of 2004 passed by the learned Junior Civil Judge, Nalgonda District is set aside and the Civil Revision Petition is allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 06.03.2015

Note: LR copy to be marked: Yes
B/o. TJMR

[\[1\]](#) 2009 (5) ALT 304
[\[2\]](#) 2015 (1) ALT 410
[\[3\]](#) 2007 (3) ALT 689
[\[4\]](#) AIR 1981 MADRAS 354
[\[5\]](#) AIR 1986 ALLAHABAD 9
[\[6\]](#) AIR 1980 SC 470
[\[7\]](#) 1969 Ker LT 927