

THE HON'BLE SRI JUSTICE K.C. BHANU

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CIVIL REVISION PETITION No.1491 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 in Execution Petition No.12 of 2012 in Original Suit No.180 of 2009 passed by the Senior Civil Judge, Gurazala, whereunder and whereby, the Execution Petition filed under Order XXI Rule 11(2) CPC to issue notice to the petitioner/judgment debtor No.2 under Order XXI Rule 37 CPC and if judgment debtor No.2 fails to pay the decretal amount to issue arrest warrant against him under Order XXI Rule 38 CPC and send him to civil prison to enable the respondent/decreed holder to realise the execution petition amount, was ordered and in pursuance of the same, judgment debtor No.2 was produced before the Executing Court and he was released on execution of a personal bond of Rs.10,000/-.

2. Learned counsel for the revision petitioner/judgment debtor No.2 contended that without giving a notice to contest the execution petition and even before issuing the arrest warrant, the impugned order was passed, therefore, she prays to set aside the impugned order.

3. Decree was passed on 09.07.2010. Thereafter, the Execution Petition was filed by the decree holder praying the Court to issue notice to judgment debtor No.2 under Order XXI Rule 37 CPC and if he fails to pay the decretal amount to issue arrest warrant under Order XXI Rule 38 CPC and send him to civil prison.

4. It is not in dispute that notice in Execution Petition has been served on the judgment debtor No.2, still he did not contest the petition. In pursuance of the same, the arrest warrant was issued.

5. The purpose of Order XXI Rule 37 CPC is to enable the judgment debtor to pay the decretal amount. Two requirements are to be satisfied to commit the judgment debtor to the civil prison viz., (i) he was having sufficient means and (ii) he wilfully refuses or neglects to pay that amount. The sworn affidavit filed by the decree holder shows that as per the decree, an amount of Rs.5,22,640/- was due and that judgment debtor No.2 is doing business and getting profit of Rs.20,000/- per month and he was having landed and house properties, but he wilfully neglected to pay the said amount and with a view to avoid the payment of the decretal amount, he was trying to shift his family to some other place. The averments stated in the affidavit filed in support of the petition remained un-challenged. Therefore, the two requirements, which are necessary to commit the judgment debtor No.2 to civil prison, are established. That is the reason why the Executing Court ordered for execution of the decree and that order needs no interference by this Court. The Civil Revision Petition is devoid of merit and the same is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C. BHANU

Date:17.04.2015

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