

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.416 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondent.

2. The petitioner herein is the decree holder in pursuance of a decree in O.S.No.264 of 2001 dated 02.01.2006 on the file of the Court of the Junior Civil Judge, Tadipatri (for short, trial Court). He filed E.P.No.43 of 2013 under Order XXI Rule 37 of CPC seeking arrest of the judgment debtor (respondent herein). The respondent filed a counter-affidavit stating that he is working as Headmaster in L.M.Aided School, Vengannapalli Village, Yellanur Mandal, Anantapur District and getting monthly salary. In the counter, he requested the trial Court to deduct the EP amount from his salary in monthly instalments. In fact, the respondent, in the counter, requested the trial Court to direct the Salary Drawing Officer to deduct the EP amount from his salary.

3. The trial Court, without recording any finding as to the means of the judgment debtor to pay the decretal amount, dismissed the application, by order dated 09.12.2014. Challenging the same, the present Civil Revision Petition is filed.

4. Learned counsel for the petitioner submits that the respondent, in spite of having sufficient means, is avoiding to pay the decretal amount and he is shortly going to retire from service, and in those circumstances only, the respondent asked for deduction of the decretal amount from his salary in monthly instalments. He further submits that even monthly instalments are collected also, it is not sufficient to satisfy the decretal amount. In view of the same, the petitioner filed the present application seeking arrest of the respondent.

5. In order to pass an order for arrest, it is incumbent upon the petitioner to prove that in spite of sufficient means, the judgment debtor is avoiding payment of the decretal amount. The petitioner should have lead evidence on this aspect and the trial Court should have recorded a finding thereof. In absence of the said aspect, the impugned order dated 09.12.2014 in EP.No.43 of 2013 in O.S.No.264 of 2001 is set aside and it is remanded to the trial Court for passing fresh orders in accordance with law, after giving due opportunity to both the parties.

6. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 01.12.2015

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