

THE HON'BLE SRI JUSTICE K.C.BHANU

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CIVIL REVISION PETITION No.4160 OF 2014

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 16.07.2014, in Execution Petition No.35 of 2013 in Original Suit No.349 of 2002 passed by the Principal Junior Civil Judge, Chilakaluripet, whereunder and whereby, application filed under Order XXI Rule 37 CPC to arrest the respondent herein/judgment debtor and detain in the civil prison for realization of the Execution Petition amount, was dismissed on the ground that the petitioner herein/decreed holder failed to prove that the respondent is having sufficient means and he failed to discharge the decretal amount.

2. Learned counsel for the petitioner /decree holder contended that the respondent/judgment debtor is having sufficient means to pay the decretal amount; that the respondent is having a rice mill and getting income from it; that without considering this aspect of the case, the Executing Court simply dismissed the petition and hence, he prays to set aside the impugned order.

3. On the other hand, learned counsel for the respondent/judgment debtor contended that the petitioner failed to show that the respondent is having sufficient means and he intentionally neglected to pay the decretal amount; that the Executing Court after recording reasons, rightly dismissed the petition and that order needs no interference by this Court.

4. Now the point for determination is whether the application under Order XXI Rule 37 CPC can be ordered for arrest of the judgment debtor and committal to civil prison?

5. Order XXI Rule 37 CPC is a salutary provision to give an opportunity to a *bona fide* debtor to enable him to pay the decretal amount.

6. Under Order XXI Rules 37 and 38 CPC two requirements are to be satisfied by the decree holder so as to send the judgment debtor to the civil prison viz., 1) the judgment debtor is having means to pay the decretal amount and 2) the judgment debtor is wantonly or wilfully avoiding or neglecting to pay the decretal amount. If the two requirements are satisfied by the decree holder, then there is no impediment in sending the judgment debtor to civil prison on payment of subsistence allowance by the decree holder.

7. As seen from the record, decree was passed on 09.03.2007 for a sum of Rs.93,240/- with interest thereon and as on the date of filing of the Execution Petition, the total amount due comes to Rs.1,64,534/- together with costs of Rs.10,219/-. From the evidence of P.W.1, it is clear that the judgment debtor is having a rice mill and it is in a running condition. This aspect of the case has not been denied or disputed. The respondent, who was examined as R.W.1, also admitted in the cross-examination that he is having a rice mill. Though he stated that the said rice mill was under attachment, that attachment would not come in the way of respondent in receiving the amounts by running the same. Therefore, that itself shows that the respondent is having means to pay the decretal amount.

8. Now it has to be seen whether the respondent wantonly neglected to pay the decretal amount or not? Decree was passed in the year 2007. Though the respondent is running a rice mill, still he has not paid any amount to the petitioner. Though he stated that he paid some amounts to the petitioner, the said aspect of the case cannot be accepted in view of bar under Order XXI Rule 1 CPC. It provides mode of payment under a decree. The case of respondent

does not fall under any one of the three conditions mentioned in the said provision. The oral contention of the respondent that he paid certain amounts to the petitioner cannot be accepted. But, however, in view of the fact that though seven years has been elapsed, the respondent failed to pay a single pie to the petitioner, suggests that he is wilfully evading to pay the decretal amount. This aspect of the case has not been taken into consideration by the Executing Court. Therefore, it is a fit case where the respondent can be sent to the civil prison. Hence, the impugned order is liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed setting aside the order and decree, dated 16.07.2014, in Execution Petition No.35 of 2013 in Original Suit No.349 of 2002 passed by the Principal Junior Civil Judge, Chilakaluripet and consequently, the Execution Petition filed by the petitioner is allowed. However, the order of this Court is kept under abeyance for a period of three (03) months from today to enable the judgment debtor to pay the entire decretal amount. If the respondent/judgment debtor fails to pay the decretal amount within the stipulated period, the order of this Court shall be given effect to and the Executing Court is directed to issue warrant of arrest to the judgment debtor to send him to the civil prison on payment of batta by the decree holder. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C.BHANU

FEBRUARY 20, 2015

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THE HON'BLE SRI JUSTICE K.C.BHANU

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DATE: 20.02.2015

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