

THE HON'BLE SRI JUSTICE K.C. BHANU

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CIVIL REVISION PETITION No.2846 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 21.03.2014, in Execution Petition No.28 of 2011 in Original Suit No.140 of 2004 passed by the Principal Junior Civil Judge, Gurazala, Guntur District.

2. The aforesaid Execution Petition was filed under Order XXI Rules 37 and 38 CPC to arrest the judgment debtor and send him to civil prison for realisation of decretal amount on payment of batta, as the judgment debtor failed to pay the decretal amount stating that though he was having sufficient means, he was neglecting to pay the amount. The said petition was dismissed on the ground that the decree holder failed to place any appropriate evidence to show that the judgment debtor, though having sufficient means, intentionally refused and neglected to pay the decretal amount.

3. Learned counsel for the revision petitioner/decreed holder contended that though the judgment debtor is having sufficient means to pay the E.P. amount, he neglected to pay amount; that he was having movable and immovable properties and therefore, he prays to allow the petition.

4. On the other hand, learned counsel for the respondent/judgment debtor contended that since the property was under attachment, decree holder can as well proceed against the

property and that the judgment debtor indebted to several others, therefore, the trial Court after considering the same rightly dismissed the execution petition by recording reasons and that order needs no interference by this Court.

5. Now the point for consideration is whether the judgment debtor is having means to pay the decretal amount but failed to pay the same and whether the petition under Order XXI Rules 37 and 38 CPC can be allowed ?

POINT:

6. Two requirements are to be satisfied for sending the judgment debtor to the civil prison in execution of the decree viz., (i) judgment debtor is having means to pay the decretal amount and (ii) the judgment debtor wantonly or wilfully avoiding or neglecting to pay the decretal amount. If the above two conditions are fulfilled or proved by the decree holder, there is no impediment in sending the judgment debtor to the civil prison on payment of batta by the decree holder.

7. The evidence of PW.1, who is none other than the decree holder, would show that the judgment debtor is having landed property and sufficient means to pay the amount, and he is getting Rs.2,00,000/- per annum on cultivation and he is also having cash of Rs.3,00,000/- with him, but with a view to avoid the debt, he is trying to leave the jurisdiction of the Court. In the cross-examination nothing had been elicited to discredit the testimony of PW.1.

8. No doubt, decree holder has not filed any document to show

that the judgment debtor is getting Rs.2,00,000/- per annum on agriculture and he is having Rs.3,00,000/- cash on hand, but at the same time, there is a possibility for judgment debtor getting some income, though not an amount of Rs.2,00,000/- per annum as contended by the decree holder. Admittedly, the judgment debtor is having Acs.3-00 Gts., of land in Sy.No.148/1 at Pulipadu village, which has been admitted by him during his cross-examination. It is also admitted by him that he is having a residential house and cattle shed. But contrary to his evidence, he stated that he was not having any movable or immovable properties. He stated that he was suffering from ill-health and living by some coolie work, which appears *prima facie* to be falls on the face of the record.

9. It is a fact that the judgment debtor filed insolvency petition, wherein properties owned by him were shown and that petition was dismissed for default. It is a fact that decree holder got attached the land owned by the judgment debtor. The order of attachment will not come in the way of the judgment debtor in cultivating the land. Therefore, by cultivating the land, he must be getting some income, but that income has been suppressed by the judgment debtor. The fact, which is exclusively within the knowledge of the person, has to be proved in terms of Section 106 of the Indian Evidence Act, 1872. The initial burden placed on the decree holder has been discharged and therefore, the burden shifts to the judgment debtor to show that he is not getting any income from the agricultural land. Therefore, from the evidence on record, it is clear that the judgment debtor is having sufficient means to pay the decretal amount.

10. Coming to the second requirement that whether the judgment debtor wilfully neglected or refused to pay the amount, it is clear from the record that decree was passed on 31.03.2008. Even though seven years has been elapsed, the judgment debtor has not shown any interest to pay part of the decretal amount. There is no explanation at all for not paying the decretal amount, which is to a tune of Rs.35,342/-. On the other hand, he has taken up a false plea that he is not having any movable or immovable properties. But, he has shown Acs.3-00 Gts., of land and also house and a cattle shed in his affidavit filed in the insolvency petition. Therefore, from the facts and circumstances of the case, it is clear that the judgment debtor wilfully neglected to pay the decretal amount. These aspects have not been taken into consideration by the executing Court. Simply because the landed property of the judgment debtor was got attached by the decree holder while the suit was pending, there is no need for him to bring the attached property to sale. The decree holder has got every right to choose any one of the modes for recovery of the amount as contemplated in terms of the Order XXI Rule 30 CPC.

11. Since two requirements are established by the decree holder, judgment debtor is liable to be committed to the civil prison on payment of batta by the decree holder. Therefore, the reasons given by the Executing Court are not in accordance with law. Hence, the impugned order is liable to be set aside.

12. Accordingly, the Civil Revision Petition is allowed setting aside the impugned order, dated 21.03.2014 in Execution Petition No.28 of 2011 in Original Suit No.140 of 2004 passed by the

Principal Junior Civil Judge, Gurazala, Guntur District.
Consequently, the Execution Petition filed by the decree holder 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 and the Executing Court is directed to issue a Committal Warrant to send the judgment debtor 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

Date:20.02.2015

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