

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Civil Revision Petition No.2098 of 2010

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Order:

This Civil Revision Petition is filed by the decree holder in O.S.No.94 of 2007 aggrieved by the order dated 20.03.2010 passed in E.P.No.18 of 2009 by the Senior Civil Judge, Avanigadda.

The petitioner obtained money decree against the respondent, basing on a promissory note executed by the respondent. When he filed E.P.No.18 of 2009 under Order 21 Rules 37 and 38 CPC seeking arrest of the respondent to realize the decretal amount, the same is dismissed by the impugned order.

It is submitted by the learned counsel for the petitioner that the court below has erroneously dismissed the E.P., only on the ground that properties of the respondent-judgment debtor are already under attachment, as such, petitioner can proceed against such properties. It is submitted that, simultaneously petitioner also can move application under Order 21 Rules 37 and 38 CPC for arrest of the respondent-judgment debtor to realize the decretal amount.

It is true, petitioner can simultaneously move an application, but, at the same time, so as to seek relief in a petition under Order 21 Rules 37 and 38, he has to make out a case showing that respondent-judgment debtor has

got sufficient means and in spite of the same he is not paying the decretal amount by honouring the decree. From the findings of the court below, it is clear that all the properties of the respondent-judgment debtor are under attachment and no material is available to show that though the respondent-judgment debtor has got sufficient means, he is not paying the decretal amount. In view of the findings recorded by the court below in the impugned order, I do not find any valid ground to interfere with the impugned order.

The Civil Revision Petition is accordingly dismissed. No order as to costs. However, if any properties of the respondent-judgment debtor are attached, it is open to the petitioner to proceed against such properties to realize the decretal amount.

As a sequel, miscellaneous petitions if any pending in the C.R.P., stand closed.

R.SUBHASH REDDY, J

January 27, 2015
MRR