

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3731 of 2010

ORDER:

This Revision Petition is filed challenging the order dt.10-08-2010 in E.P.No.7 of 2009 in O.S.No.29 of 2006 of the District Judge, Anantapur.

2. Petitioner herein is the judgment debtor in the suit. Suit was filed for eviction of the petitioner, recovery of arrears of rent and mesne profits.

3. The Suit was decreed on 18-09-2007. Thereafter, the respondents filed E.P.No.7 2009 to execute the decree claiming Rs.77,429/- as arrears of rent and mesne profits as per the said decree.

4. Counter affidavit was filed by the petitioner contending that he had paid Rs.20,000/- to the respondents towards security deposit, that he could not secure any work for ekeing out livelihood, and he has to maintain his wife and children who are students. He also stated that his wife is suffering from heart ailment and she had undergone operation in the year 1997. He claimed that he has no assets, either movable or immovable, and was earning only Rs.50/- per day by way of cooly work.

5. Before the Court below, the D.Hr. No.1 examined himself as P.W.1 and the petitioner examined

himself as R.W.1 and marked Ex.B-1.

6. By order dt.10-08-2010, the Court below allowed the E.P. It held that although the payment of Rs.20,000/- made by the petitioner was received by the respondents and was admitted by the respondents, since such payment was not in conformity with Order 21 Rule 2 CPC, the same cannot be adjusted as requested by the petitioner. It further held that the petitioner admitted in his evidence that one of his sons is studying engineering and his four daughters were also studying graduation and he has spent money for treatment of his wife. It held that he could not meet this expenditure unless he got other means. Therefore it did not accept his contention that he did not have means to satisfy the decree.

7. Challenging the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that Court below erred in not giving set off for a sum of Rs.20,000/- which was paid by the petitioner to the D.Hr.No.1 even though the same was admitted to have been received by the D.Hr./P.W.1.

9. Learned counsel for the respondents does not dispute this fact.

10. Therefore, it has to be taken that out of Rs.77,429/-, the petitioner having paid Rs.20,000/-, he is

liable to pay only the balance of Rs.57,429/-.

11. At the time when the Revision Petition was admitted, the petitioner was directed to deposit 1/3rd of decretal amount within six weeks on 20-08-2010 in C.R.P.M.P.No.4999 of 2010. The petitioner admittedly has complied with the same. Thus petitioner has deposited a further sum of Rs.25,809/- which can be withdrawn by the respondents. This leaves the balance of Rs.31,620/-.

12. Since the finding of the Court below is that the petitioner has got the means to satisfy the decree and since the petitioner has already paid a sum of Rs.45,809/-, further time of one month from the date of receipt of a copy of this order is granted to the petitioner to pay the balance of Rs.31,620/- (Rupees Thirty One Thousand Six Hundred and Twenty only) with interest thereon.

13. The Civil Revision Petition is disposed of with the above directions. In default of complying with the above order within the time specified, Civil Revision Petition shall stand dismissed. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-06-2015

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