

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

**CIVIL REVISION PETITION No.772 of 2015**

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**ORDER:**

This Civil Revision Petition is filed challenging the order  
dt.03-02-2015 in E.P.No.22 of 2013 in O.S.No.28 of 2012  
of the Senior Civil Judge Punganur.

2. The petitioner herein is the judgment debtor in the  
above E.P.

3. O.S.No.28 of 2012 was filed against him by  
respondent for recovery of money and it was decreed on  
16-04-2013.

4. Thereafter E.P.No.22 of 2013 was filed under Order  
XXI Rules 37, 38 and 40 CPC by respondent against  
petitioner for recovery of a sum of Rs.3,52,148/- and in  
default of petitioner paying the said amount, to commit him  
to civil prison. It was contended that the petitioner has  
sufficient means to pay the decretal amount as he is  
having Ac.7.00 cents of dry land and Ac.3.00 cents of wet  
land and getting annual income of Rs.3,00,000/- through  
agriculture. It was further contended that petitioner is  
doing seasonal business in Tomato, tamarind, jaggery,  
jersey cows etc. and also getting Rs.2,00,000/- through

seasonal business and in spite of repeated demands, he is evading to discharge the E.P. amount.

5. Counter affidavit was filed by petitioner opposing the E.P. It is contended that the decree obtained by respondent was not on merits and that the petitioner was not examined in the suit proceedings during trial and therefore the decree does not bind him. It is further contended that respondent got filed a false affidavit about means of petitioner, that he had no land in his name anywhere, and is also not getting any amount from agriculture and seasonal business. He contended that he is a landless poor person and is living in a rented accommodation with wife, two female children and old aged mother, who is suffering from ill-health. He also claimed that he was living by attending to cooli work as daily labour.

6. Before the Court below, the respondent examined P.W.1 and marked Exs.P-1 to P-3. Ex.P-1 is the certified copy of certified copy of 1-B Namoonna and Exs.P-2 and P-3 are certified copies of adangals, which disclose that there are certain properties standing in the name of father of petitioner.

7. By order dt.03-02-2015, the Court below allowed E.P. and directed issuance of a warrant of arrest against

petitioner. It held that the petitioner did not go into the witness box in spite of giving several adjournments; that petitioner was habituated to file several frivolous petitions to prolong the matter and did not produce evidence on his behalf; the oral evidence of respondent indicated that petitioner is having income of Rs.5,00,000/-; although Exs.P-1 to P-3 do not indicate the name of petitioner, they show that properties exist in the name of father of petitioner. It was also held that the petitioner did not adduce evidence to prove his pleading that he is not getting any income and is living by attending cooli work. It therefore held that he is having sufficient income and has means to pay the decretal amount and he is evading it.

8. Challenging the same, this Revision is filed.

9. Heard Ms.N.Sameena, learned counsel for petitioner. None appears for respondent even though notice was sent to him and it is refused by him.

10. The learned counsel for petitioner vehemently contended that petitioner had no means to satisfy the decree and even though respondent did not adduce any positive evidence to show that the petitioner had means to satisfy the decree, merely on the basis of oral evidence of respondent, the Court below erred in allowing E.P. and directing arrest of petitioner. She relied upon the

judgment of the Supreme Court in **Jolly George Varghese and another Vs. The Bank of Cochin**<sup>[1]</sup>. In that case, the Supreme Court held that no person shall be imprisoned merely on the ground of inability to fulfill a contractual obligation according to Article 11 of the International Covenant on Civil and Political Rights and that if a judgment debtor is *bona fide* unable to pay off his debt, an order for his detention in prison in execution of the decree would be violative of Article 21 of the Constitution of India as well as spirit of Article 11 of the Covenant. It held that there must be some element of bad faith in discharge of the decree and to warrant arrest of the judgment debtor.

11. Admittedly, Exs.P-1 to P-3 filed by respondent show that the father of petitioner had certain properties. In the counter affidavit filed by petitioner, nowhere it is mentioned that the father of petitioner is living with him. He only stated that he is living with his aged old mother, wife and two female children. This implies that the father of petitioner is no more. So, the properties in the name of father would naturally devolve on petitioner. So, the petitioner can be said to have means to satisfy the decree. The fact that the petitioner did not go into the witness box to speak about his means also indicates that the petitioner wants to avoid cross-examination by

respondent on the aspect of his means. The Court below has recorded that in spite of being given several opportunities, the petitioner has not adduced any evidence in support of his lack of means. Therefore, I am of the opinion that the Court below was right in holding that the petitioner was having means to satisfy the decree, that he is deliberately avoiding to do so and his conduct is not bonafide.

12. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

13. Petitioner is granted two months time from today to satisfy the decree and pay the entire E.P. amount. If not, the petitioner shall be arrested and sent to civil prison under Order XXI Rules 37 and 38 CPC.

14. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

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**JUSTICE M.S. RAMACHANDRA RAO**

Date: 01-07-2015

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[\[1\]](#) (1980) 2 SCC 360