

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5059 of 2015

ORDER:-

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, (hereinafter, 'the Code'), by the unsuccessful decree-holder, is directed against the order, dated 11.08.2015, of the learned I Additional District Judge, at L.B.Nagar, Ranga Reddy District, passed in E.P.No.45 of 2014 in O.S.No.751 of 2010 filed under Order XXI Rule 11 of the Code read with Rule 141(2) of Civil Rules of Practice, 1980, for arrest and detention of the judgment debtor in the Civil Prison for realization of the decree debt in a sum of Rs.26,89,166/- with subsequent interest and execution costs.

2. I have heard the submissions of Sri V.Srikantha Rao, learned counsel for the revision petitioner/decreed-holder ('decree-holder', for brevity) and Sri L.Kumar Sharma, learned counsel for the respondent/judgment debtor ('judgment debtor', for brevity). I have perused the material record.

3. The case of the decree-holder as borne out by the material record and as per the submissions made before this Court, in brief, is as follows:-

"The decree-holder brought the suit for eviction of the judgment debtor and for recovery of arrears of rents and mesne profits etcetera. In that suit, an application in I.A.No.2020 of 2010 was filed seeking a direction to the judgment debtor to deposit Rs.3,00,000/- towards arrears of rent for the period from 23.10.2008 to 23.02.2010 payable at the rate of Rs.20,000/- per month and to direct the judgment debtor to continue to deposit the rents every month at the said rate

till the disposal of the suit. After enquiry and on merits, the trial Court allowed the said application and by orders, dated 07.03.2010, directed the judgment debtor to deposit Rs.3,00,000/- towards arrears of rent for the aforementioned period at the rate of rupees 20,000/- per month within two months; and, further directed the judgment debtor to continue to deposit the future rents also at the rate of Rs.20,000/- per month from the date of the order, i.e., 07.03.2010. The aggrieved judgment debtor filed C.R.P.No.2628 of 2011 before this Court. The said CRP was dismissed on 06.09.2011. Accordingly, the order of the trial Court in the aforementioned interlocutory application has become final. Therefore, by virtue of the orders in the interlocutory application, the judgment debtor has become liable to pay Rs.12,16,616/- to the decree-holder. Hence, an Execution Petition in E.P.No.7 of 2012 was earlier filed for execution of the decretal order in I.A.No.2020 of 2010 in O.S.No.751 of 2010 and attachment and sale of movable properties of the judgment debtor was sought. In the said execution proceedings, the attached movable properties of the judgment debtor were sold and a sum of Rs.3,500/- was recovered in Court auction sale. After deducting the said amount from out of the amount due, another execution petition in E.P.No.42 of 2014 was filed pursuant to the decretal orders in the interlocutory application for recovery of the balance amount of Rs.12,22,166/- with execution costs. However, that execution petition was dismissed. A revision in C.R.P.No.5039 of 2015 filed by the decree holder is pending before this Court. Eventually, the suit was decreed on 13.02.2012. In the First Appeal in A.S.no.716 of 2013 preferred before this Court, interim stay orders were granted directing the respondent to pay Rs.5,00,000/- within eight weeks. And, at the request of the judgment debtor, time was extended by

this Court by four more weeks subject to the observation that the stay orders shall stand vacated in case of non deposit of the amount as directed within the extended time. Even thereafter also, the judgment debtor did not deposit the amount due and payable to the decree-holder. Since the suit was decreed, the subject execution petition is filed for recovery of the money due as per the terms of the decree granted to the decree holder. Though the judgment debtor is having sufficient means to pay the decree debt, he wilfully neglected and intentionally avoided to pay the decree debt to the decree-holder. Hence, the decree-holder is constrained to file the present Execution Petition for realization of the amount due by arrest and detention of the judgment debtor in the civil prison.”

4. The respondent herein/judgment debtor filed a counter *inter alia* stating as follows: ‘He had preferred an appeal. He filed an application for grant of stay of execution of the decree of the trial Court. Conditional stay orders were granted by this Court. However, he could not comply with the conditions imposed in the stay orders granted by this Court as he was in financial crisis and could not mobilize the funds. At present, he is in a position to mobilize the funds. He is taking steps for extension of stay orders. The execution petition is filed alleging falsely that this judgment debtor is likely to leave the jurisdiction of the Court or is trying to abscond from the jurisdiction of the Court to avoid the execution of the decree though the judgment debtor is very much continuing in possession of the property by filing a first appeal suit before this Court. The judgment debtor is very much residing in the suit schedule property and is not going to abscond or leave the jurisdiction of the Court. The decree holder did not file an affidavit along with the execution petition as

required under facts and in law. The decree holder has to satisfy the mandatory requirements for ordering arrest of this judgment debtor and detention in civil prison. There are no grounds to order arrest and direct the detention of the judgment debtor in a civil prison.’

5. At the time of enquiry, the decree-holder was examined as PW1; however, no exhibits were marked on his side. No oral and documentary evidence was adduced on the side of the judgment debtor.

6. The Executing Court, having found that that the decree debt could not be fully satisfied despite sale of movable properties of the judgment debtor in the earlier execution proceedings and that the decree-holder could not make out a case that the judgment debtor is likely to leave the jurisdiction of the Court or is trying to abscond from the jurisdiction of the Court to avoid the execution of the decree and that the decree-holder also failed to establish that the judgment debtor is having sufficient means to satisfy the decree debt or a substantial part thereof and that no grounds are made out for ordering arrest of the judgment debtor dismissed the Execution Petition. Aggrieved of the said orders, the decree-holder is before this Court.

7. I have gone through the record including the execution petition and the deposition of the decree holder.

8. The case of the decree-holder is already stated *supra*, in detail. Except stating the chronology of events and also that the judgment debtor failed to comply with the directions of this Court in the stay orders in regard to deposit of the amount inspite of this Court extending time for compliance of the condition and that the judgment

debtor is having sufficient means to pay the money and yet he had failed to pay the amount due to the decree-holder, no further facts with regard to the means of the judgment debtor to satisfy the decree debt are stated either in the pleading or in the evidence affidavit of the decree-holder. In the affidavit filed in lieu of examination-in-chief nothing is stated by the decree-holder about the financial capacity of the judgment debtor and the immovable properties, if any, which the judgment-debtor owns and possesses. It is not the case of the decree-holder that the judgment debtor is having immovable properties. No details of immovable properties, if any, owned and possessed by the judgment debtor are mentioned in the pleadings and evidence of the decree-holder. Thus, the decree holder neither pleaded nor established that the judgment debtor is having means and immovable properties to discharge the whole or a substantial portion of the decree debt and that despite having such means, the judgment debtor is intentionally and wilfully refusing to pay the decree debt with the object of obstructing or delaying the execution of the decree. Be that as it may.

9. Section 51 of the Code mandates that, the Court may, on the application of the decree-holder, order execution of the decree, by arrest of the judgment debtor and his detention in the civil prison, where arrest and detention is permissible, provided that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same. The provision of law postulates that the initial onus of proof is on the decree-holder to plead and establish that the judgment debtor has means to pay the decree debt or some substantial part thereof

and that despite having such means; the judgment debtor has refused or neglected to pay the same. In the case on hand, there is absolutely no evidence brought on record by the decree-holder to show that the judgment debtor has means to pay the amount of the decree or a substantial part thereof. Though it is the case of the decree-holder that the judgment debtor is likely to abscond or leave the limits of the jurisdiction of the Court, even that pleaded case of the decree holder is not established. It is to be noted that the suit is filed for eviction and other reliefs. The judgment debtor, who suffered a decree filed an appeal and was continuing in possession of the property at the relevant time though he has not complied with the conditional orders of stay granted by this Court in his appeal suit. Indeed, the fact that the judgment debtor filed an appeal assailing the eviction decree and was continuing in possession of the property at the relevant time would indicate that he is not likely to abscond or leave the local limits or the jurisdiction of the Court. On the above analysis, this Court finds that the decree holder failed to discharge the initial onus of proof and the legal burden and therefore, he is not entitled to the relief claimed in the execution petition.

10. Viewed thus, this Court finds that absolutely no grounds are made out for ordering arrest and detention of the judgment debtor in civil prison and that therefore, the Court below is justified in passing the impugned order and that therefore the said order brooks no interference.

11. Before parting, it is necessary to note that since the stay orders in the appeal suit of the judgment debtor are not in force and stood vacated for non-compliance of the conditions imposed by this Court while granting stay orders, it is needless to state that the decree

holder, may, execute the decree insofar as the term of eviction of the judgment debtor from the decree schedule property and obtain delivery of possession in appropriate execution proceedings, if he has not already done so. The learned counsel for the decree holder had expressed apprehensions that if this revision and the connected revision are dismissed the decree holder may not at all realize the fruits of the decree. It is needless to mention that the decree holder is always entitled under law and facts to file any number of execution petitions and seek appropriate relief, which the law permits; hence, the dismissal of the execution petitions will not come in the way of the decree holder pursuing the remedies, which the law permits. It is trite to observe that fresh execution petition, if any, which may be filed by the decree holder, shall be disposed of by the Court concerned in strict accordance with the procedure established by law.

12. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed, in view of this final order.

M. Seetharama Murti, J

26th December, 2016
AJR/RAR