

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL REVISION PETITION No.3990 of 2014
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ORDER:

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This civil revision petition, under Section 115 of the Code of Civil Procedure, 1908 ('the Code' for short), by the petitioner/judgment debtor ('the JDr' for brevity) is directed against the order dated 04.08.2014 of the learned Principal Senior Civil Judge, Anantapur made in EP.No.116 of 2012 in OS.no.245 of 2006 filed by the respondent herein/Decree holder ('the DHR' for short) under Order XXI Rules 37 and 38 of the Code requesting for ordering arrest and detention of the JDr in civil prison for realisation of the decree debt.

2. The basic facts in a nutshell are as follows: -

'The DHR having obtained a decree for recovery of money had filed the execution petition against the sole JDr for recovery of money in a sum of Rs.2,26,253/- with subsequent interest and execution costs and sought arrest and detention of the JDr in the civil prison. In support of the request in the execution petition, the DHR had also filed a proof affidavit. The JDr had filed a counter and resisted the execution petition. During the course of enquiry, the DHR was examined as PW1 and exhibits A1 to A9 were marked. However, no oral evidence and documentary evidence was adduced on the side of the JDr. On merits, the Court of execution had allowed the EP and directed the JDr to pay the decree debt within one month from the date of the orders and had further directed that a warrant of arrest be issued to commit the JDr to civil prison for a period of three months on his failure to pay the decree debt within the time stipulated in the order and on payment of the subsistence allowance by the DHR. Therefore, the aggrieved JDr is before this court.'

3. I have heard the submissions of the learned counsel for both the sides. I have perused the material record.

4. Now the point for determination is:

‘Whether the DHr had not made out valid and sufficient grounds for ordering the execution of the decree by arrest and detention of the judgment debtor in the civil prison as per the procedure established by law? And, if so, whether the impugned order is liable to be set aside?’

5. POINT:

5. (a) The introductory facts are already stated supra, in detail. The case of the DHr in the execution petition is as follows: ‘The DHr had obtained the decree for recovery of money in a sum of Rs.2,26,253/- including interest and costs. The JDr had not paid the decree debt though he is having sufficient means and properties in his name. He owns lands viz., Ac.4.00 cents and Ac.0.34 cents in S.Nos.214/2 and 215, which are valuable lands. He is also having share in his joint family properties. He is intentionally evading to pay the decree debt inspite of having sufficient means, only to delay and defeat the just claim of the DHr. Therefore, the EP is filed under Order XXI rules 37 and 38 of the Code requesting to issue warrant of arrest against the JDr for realisation of the decree debt with subsequent interest and EP costs.’

5. (b) The defence of the JDr in his counter is as follows: - ‘The lands viz., Ac.4.00 cents in S.no.214/2 and Ac.0.34 cents in S.no.215 originally belonged to the Government. The then MRO had assigned the said lands in favour of the JDr after considering his eligibility as a landless poor person for assignment of the said lands. The land is covered by hillocks and boulders. Out of the said land only an extent of Ac.1.50 cents is fit for cultivation. The JDr is raising dry crops in the said land. However, due to severe drought during the last few years, he could not realise any income from the said lands. He had incurred huge debts for raising the crops. The Government had also granted subsidy to the JDr as there was continuous failure of crops in his land. Except the said land, the JDr is not having any other properties. The land, which is assigned, cannot be alienated. The allegations that the JDr is getting income from the lands and that he has a share in the property of

the joint family and that his joint family owns Ac.25.00 cents of land and that his children are studying in corporate schools and that he is meeting their huge educational expenses are all false and denied. The JDr has absolutely no means to discharge the EP amount and, therefore, he is not liable for arrest.'

5. (c) The learned counsel for the JDr while reiterating the case of the JDr that he has no means and that he did not wilfully neglect to pay the decree debt had *inter alia* contended as follows: - 'The Court below ought to have seen that the JDr is a landless poor person and that the Government had assigned the land of an extent of Ac.4.00 cents in Sy.no.214/2 and Ac.0.34 cents in S.no.215 and that the said dry land is not useful for cultivation. The Court below ought to have seen that the DHr failed to adduce any evidence that the JDr is raising crops in the above land and is getting income, which is sufficient to discharge the decree debt or a substantial part thereof. The Court below ought to have seen that a large extent of the said land is covered by hillocks and boulders and that only a part of the land is cultivable as dry land and that there is severe drought for last several years in Anantapur District and that, therefore, the JDr is not raising any crops even in that small portion of the land and is not getting any income from the said land and that, therefore, he is not having means much less sufficient means to discharge the decree debt. The Court below ought to have seen that the land being an assigned land is inalienable and that the JDr therefore cannot sell the land and raise funds to discharge the decree debt. The JDr is not having any properties like car and residential houses at Reddypalli village and groundnut decorticator. The DHr did not produce any evidence to show that the JDr owns any land or other properties. The Court below did not give any opportunity to the JDr to adduce any evidence on his side. The observation in the order of the Court below that nothing prevented the JDr from cultivating his land is unreasonable and unfair as the JDr is not in a position to cultivate the land because of the severe drought conditions in the village and for want of sources of irrigation. The JDr had not raised any dry crops like Onion and Paddy crops in the cultivable portion of the land

during past several years. The findings of the Court below based on the evidence of PW1 that the JDr is having landed property and that the land is a valuable land and that he is cultivating the land and realising produce are unsustainable. The evidence of PW1 is not true. The findings that the JDr had deliberately and wilfully abstained from paying the decree debt though he has capacity of paying the decree debt or substantial portion thereof are not based on facts and evidence brought on record.'

5. (d) On the other hand, the learned counsel for the DHr had submitted that despite suffering a decree, the JDr had wilfully and deliberately neglected to pay the decree debt to delay and defeat the just claim of the DHr and that the JDr is having substantial properties and means to discharge the entire decree debt and hence, unless arrest is ordered, the DHr will not be in a position to realise the decree debt and that the well reasoned order of the Court of execution does not call for interference and that there is no merit in the revision.

5. (e) In the present case, PW1, who is the DHr, in his examination in chief had reiterated his pleaded case. In his cross examination, the following points were elicited: 'It is true that the land that belongs to the JDr is a rain fed land. It is true that as per contents of exhibit A9, the property was mortgaged to PACS Bank and Andhra Bank. It is true that since five years Anantapur District is declared as a drought affected area. The lands are being cultivated through HLC canal water. The canal water will be released till the crop is harvested (reaped). The JDr gets 200 bags of paddy. I have not filed any document to that effect. Since 4 years JDr is raising crops. The JDr had proclainers and is doing business. I have not filed any documents to that effect nor mentioned the said facts in my affidavit. Exhibit A7 shows the ownership of the lands by the JDr and the cultivation of the said lands.' He had denied the following suggestions: - 'It is not true to say that for one or two months the canal water will be supplied. It is not true to say that the JDr has not raised any crops due to drought and there was no income from the said lands. It is not true to say that the JDr is totally based upon agriculture and that due to drought he could not get any income from the agriculture and that

he not even had means to pay the loans to the banks. It is not true to say that the JDr is not doing any business nor he has no proclainers.' Thus, the DHr had maintained his stand in his evidence that the JDr is having valuable lands and that he is cultivating the said lands through HLC canal water and that he has been raising crops since four years prior to his deposition and that the JDR is getting 200 bags of paddy from his land. To corroborate his oral evidence, he had exhibited the following documents/exhibits A1 to A9: - '(1) 1-B Namoonna in the name of the JDr; (2) Adangal pahani containing three pages of the year 2011-2012; (3) 1-B Namoonna in the name of father of JDr; (4) Adangal Pahani for the year 2011-2012; (5) Endorsement dated 17.01.2012 issued by Tahasildar; (6) Adangal Pahani for the year 2011-2012; (7) Endorsement issued by Tahasildar B.K.Samudram vide RC.543/11/B dated 12.11.2012 in Sy.No.214/2 and 215; (8) Adangal/Pahani for the year 2011-2012 in Sy.No.214/2 in the name of JDr; and (9) Encumbrance certificate of property dated 23.10.2012.' The oral evidence of the DHr in regard to cultivation of the lands by the JDr is well corroborated by the entries in the documentary evidence. It is no doubt true that in an execution petition filed requesting to commit the JDr to a civil prison, the initial onus of proof will be on the DHr to establish that the JDr has got sufficient means to pay the amount due under the decree or some substantial part thereof and that he had wilfully refused or neglected to pay the same with the object or effect of obstructing or delaying the execution of the decree. The evidence that was adduced on record, in the well considered view of this Court, is sufficient to hold that the initial onus of proof, which is on the DHr, is discharged. In the decision in **Aluru Venkatarao v. Kodali Venkata Sri Krishna**^[1] this Court having referred to a decision in **Jolly George Varghees's case (AIR 1980 SC 470)** had observed that if the decree holder is able to produce some material or evidence regarding the source or means of the judgment debtor that may normally be sufficient to pay the decretal amount and also the status, occupation and the assets of the judgment debtor, then whether such means or source etcetera are not sufficient to pay the decretal amount being a fact especially within the knowledge of the judgment debtor, the burden of proving

the same would be on the judgment debtor in view of Section 106 of the Evidence Act. When the onus to introduce evidence shifted to the JDr he did not adduce any evidence. No reasons are forthcoming for the JDr not deposing in the matter to substantiate his defence pleaded in the counter. The law is well settled that pleading is not evidence. In the facts and circumstances of the case, the Court below having taken into consideration the evidence of the DHr and the fact that no rebuttal evidence was adduced by the JDr to translate his pleaded case in his counter into acceptable evidence had recorded a finding that the JDr is having sufficient means to discharge the EP amount and that he is deliberately evading to pay the decree debt and had accordingly allowed the EP and directed the JDr to pay the decree debt within one month from the date of the orders and had further directed that a warrant of arrest be issued to commit the JDr to civil prison for a period of three months on his failure to pay the decree debt within the time stipulated in the order and on payment of the subsistence allowance by the DHr. A careful analysis of the evidence on the side of the DHr, which had remained unrefuted for the reason that the JDr did not adduce any evidence in rebuttal, would lay bare that the JDr is a person owning substantial properties and means and that sufficient grounds are made out by the DHr for considering his prayer in the EP. Thus, on an overall consideration of the evidence on record, a safe conclusion can be arrived at that the DHr had sufficiently established the case by adducing required standard of evidence for ordering the execution of the decree by arrest and detention of the JDr in a civil prison.

6. Viewed thus, this Court finds that there is no merit in the revision and that the revision petition is liable to be dismissed. The point is answered accordingly.

7. In the result, the Civil Revision Petition is dismissed. Nevertheless, the JDr is granted one (01) month time from the date of the receipt of a copy of this order to pay the amount due towards full satisfaction of the decree debt. And, it is needless to state that on failure of the JDr to comply with the said direction, the court of execution shall issue a warrant of arrest against the JDr

in accordance with the procedure established by law and further proceed with the execution proceedings as directed in the orders and as per procedure.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

JUSTICE M. SEETHARAMA MURTI

01st June 2016

Vjl

[\[1\]](#) 1994 (3) ALT 538