

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2135 of 2015

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the petitioner/judgment debtor, is filed assailing the orders dated 01.04.2015 of the learned I Additional Senior Civil Judge, Visakhapatnam passed in E.P.No.15 of 2013 in O.S.No.1168 of 2009 filed under Order XXI Rule 37 of the Code for realization of the decree debt by arrest and detention of the judgment debtor in Civil Prison.

2. I have heard the submissions of the learned counsel for the petitioner/judgment debtor and the learned counsel for the respondent/deGREE-holder. I have perused the material record.

3. The case of the decree-holder is that a sum of Rs.2,24,000/- and odd with interest and costs is due under the decree that was granted on merits and that the JDr is having movable and immovable properties in and around Visakhapatnam and that inspite of having sufficient means to pay the entire decree debt the JDr is wilfully and intentionally avoiding to pay the decree debt to delay and defeat the just claim of the decree-holder. The contention of the judgment debtor is that he is unemployed and that he is

being supported by his brothers and sisters and that he is not having sufficient means to pay the decree debt in a lump sum and that he is prepared to obey the decree but, due to financial crisis and stringencies he is unable to pay the decree debt at one time. After the enquiry, the trial Court overruled the objections raised in the counter of the judgment debtor and passed the impugned orders ordering arrest of the judgment debtor and directed issuance of the arrest warrant against the judgment debtor upon payment of the required amount towards subsistence allowance of the judgment debtor. Aggrieved of the said orders, the judgment debtor had filed this revision petition.

4. Be it noted that at the time of admission, this Court, while granting interim stay, had directed the judgment debtor to deposit 1/3rd of the decree debt within four weeks from that day. It is fairly stated by the learned counsel for both the sides that the said orders are complied with.

4.1 The learned counsel for the petitioner/judgment debtor ('JDr') would submit that the trial Court having ignored the contents of the counter filed by the JDr had further failed to record a finding in regard to the means of the judgment debtor and also willful and wanton evasion on his part to pay the decree debt; and that therefore, the order impugned directing the arrest of the JDr is not justified; and that the Court below had ignored the evidence of the DHr and had failed to note that the DHr had admitted that she had not

filed any documents to show that the JDr owns movable and immovable properties; and that the Court below ought to have seen that the JDr is unemployed and is also suffering from Lungs and Heart problems; and that in view of the fact that the conditions required for ordering arrest of the judgment debtor are not satisfied, the order of the Court below is unsustainable in Law.

4.2 On the other hand, the learned counsel for the respondent/decreed-holder (DHr) would submit that the Court of execution, having considered the evidence of PW1, wherein, it is stated that the judgment debtor is having substantial movable and immovable properties, had correctly analyzed the evidence brought on record and had then recorded the findings supported by valid and cogent reasons and that the said findings, which are recoded after appreciation of the facts properly and the evidence in the correct perspective, do not call for any interference; and that the CRP is devoid of merit.

5. 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?’

6. POINT:

6.1 Order XXI of the Code contemplates the execution of

a decree by ordering arrest of the judgment debtor and Section 51 of the Code lays down that the Court may, on the application of the decree holder, order execution of the decree inter alia by ordering arrest and detention of the judgment debtor in prison where arrest and detention is permissible. The proviso to the said section states that where the decree is for payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison and unless the court, for reasons to be recorded in writing, is satisfied among other things, that the judgment debtor is or has had since the date of decree the means to pay the amount of the decree or some substantial part thereof and had refused or neglected to pay the same.

6.2 I have gone through the order of the Court below, keeping in view the contentions urged. I have bestowed my attention to the facts and given earnest consideration to the submissions. 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. Nevertheless, it is for the decree holder to place sufficient evidence in the first instance regarding the sources or means of the judgment debtor that may normally be sufficient to pay the decretal amount or a substantial part thereof.

6.3 A sum of Rs.2,24,000/- and odd with interest and costs is due and payable under the decree. A 1/3rd of the EP amount was paid as per the interim stay orders granted by this Court. The DHr in her evidence reiterated the facts affirmed by her in her affidavit filed in support of the execution petition, though she had admitted that she did not file any documents to show that the JDr is having movable and immovable properties. From the evidence brought on record, particularly the cross examination of the JDr, it is clear that his wife is a house wife; and they are having children; and that his two daughters are studying B. Tech on merit in Avanthi College; and that he is having five brothers; and that he is not having cordial terms with them; and that he is residing in the house of his sister on payment of monthly rent of Rs1,500/-; and that his sister has been looking after their livelihood; and that he is unable to pay the decree debt at one time; and that he is prepared to pay the decree debt in monthly installments @ Rs.500/- per month.

Though he had stated that his two daughters are studying B. Tech on merit in Avanthi College, he did not produce any documentary evidence from the educational institutions of his daughters to substantiate his said contentions. As rightly contended by the learned counsel for the DHr, the fact that the JDr cannot be heard to say that he is not paying the educational fee of his two daughters who are pursuing B.Tech course in Avanthi College in the absence of any reliable evidence to the contra. The fact that the JDr is able to meet huge higher educational expenses of his children, who are pursuing higher education in private Engineering college is sufficient to infer in the positive that he is having income and sources of income. He did not examine his sister to prove his defence that she is supporting his family. He is maintaining his family has to be accepted in the absence of any evidence to the contra. Therefore, his contention that he is unemployed and not having any income or sources of income cannot be countenanced. Further, what is to be noted is that the defence of the JDr is that he is not in a position to pay the decree debt in a lumpsum. It is not his case that he is not in a position to pay the decree debt at all. Even though the decree was granted long time back and the EP was filed in the year 2013 he did not even make sincere attempts to discharge the decree debt even in instalments to show his *bona fides*. He had paid a 1/3rd of the EP amount after the conditional stay orders are granted in this CRP filed in June 2015. As per

the provision in Section 51 of the Code where the decree is for the payment of money, execution by detention of the JDr in prison can be ordered after giving the JDr an opportunity of showing cause why he should not be committed to prison and on the satisfaction of the Court that the JDr 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 neglected to pay the same. The very defence that the JDr is not able to pay the entire decree debt in a lump sum and that he had paid at one time a 1/3rd of the debt due would only indicate that he has got means to pay a substantial portion of the decree debt at one time. His failure to pay any amounts towards the decree debt till the orders of arrest were passed in the EP and till the said orders are stayed by this Court would further make it manifest that in spite of having means to discharge a substantial portion of the decree debt he is refusing and neglecting to pay the same. 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 the required standard of evidence for ordering the execution of the decree by arrest and detention of the judgment debtor in a civil prison.

7. For all the reasons assigned, this Court is of the well considered view that the impugned order of the Court below suffers from no legal infirmity. Therefore, this Court finds that the order impugned directing the arrest of the JDr and

further directing issuance of a warrant of arrest against him is sustainable both under facts and in law.

The point is answered accordingly. Viewed thus, this Court finds that the Civil Revision Petition is liable for dismissal.

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

However, the judgment debtor is given an opportunity, to file, if he so desires and so chooses, an application before the Court of execution, within a period of 15 days from the date of the receipt of a copy of this order, making a request to accord permission to pay the balance decree debt in installments. It is needless to state that in case such an application comes to be filed, the Court of execution shall give an opportunity to the decree-holder to file a counter and dispose of the said application on merits and in strict accordance with the procedure established by law.

However, while calculating the amount due and payable under the decree, the amount already paid by the judgment debtor shall be given credit to.

It is further made clear that the Court below shall issue a fresh warrant of arrest either on the failure of the JDr to file, within the time stipulated in these orders, an application for permission to discharge the decree debt in installments or on the dismissal, on merits, of his said application, if any, filed in that regard.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

19th February, 2016
Bvv

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