

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.580 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/J.Dr being aggrieved by the Order dt.02.12.2015 in E.P.No.45 of 2014 in O.S.No.65 of 2011 on the file of Senior Civil Judge, Sompeta, whereunder the Executing Court passed the following order:

“ Issue fresh arrest warrant in respect of sole J.Dr., on payment of fresh process through Court directing the Field Assistant of this Court to co-ordinate with Field Assistant of the Court concerned within the District of Nellore. Call on 30.12.2015”.

The petitioner's case is that respondent/D.Hr filed O.S.No.65 of 2011 against him for recovery of Rs.1,10,000/- with costs and interest and the petitioner is resident of Nellore and working as Government Contractor and he had no notice in the said O.S.No.65 of 2011 and he was set *ex parte* in the said suit on 08.02.2012 and thereafter the said suit was decreed *ex parte* on 1-10-2012. His further case is that thereafter the respondent/D.Hr filed E.P.No.45 of 2014 for recovery of an amount of Rs.1,52,899/- under Order 21 Rules 37 and 38 of CPC by way of arrest of the petitioner/J.Dr. His further case is that in the said EP also, no notice was served on him, but the respondent/D.Hr invoked substituted service and got published the notice in Praja Shakthi having limited circulation and the said paper has no circulation outside Sompeta and therefore he had no notice of filing of EP against him. On the basis of said publication, the Executing Court was pleased to issue a arrest warrant on 13.04.2015. As the respondent/D.Hr failed to pay process fee, the Court again issued a fresh arrest warrant on 4.06.2015. Again, a fresh arrest warrant

was issued against the petitioner on 2.12.2015. Having aggrieved by the present arrest Warrant, the revision petitioner filed the instant C.R.P.

Initially this Court in CRP MP No.729 of 2016 issued stay of all further proceedings, including arrest of the petitioner, in E.P.No.45 of 2014 in O.S.No.65 of 2011 on the file of Senior Civil Judge, Sompeta, until further orders, on condition of petitioner depositing one half of the EP amount before Executing Court within a period of four weeks from the date of this Order i.e., 05.02.2016 with a direction that if the petitioner fails to comply with the said order, the Order shall be deemed cancelled.

When the matter came up for hearing, learned counsel for revision petitioner submitted that inspite of his intimation to the petitioner/J.Dr about the Order in CRP MP No.729 of 2016, dt. 05.02.2016, he failed to comply with the said order and therefore, he is ready to argue the main Civil Revision Petition.

Learned counsel for the respondent also expressed his readiness and hence, the matter is heard.

The main grievance of the revision petitioner is that he is resident of Nellore and he had no notice about the filing of arrest EP by the respondent/D.Hr and therefore, he could not make out his presence before the Executing Court and therefore an opportunity may be given to him to contest the E.P.

Learned counsel for respondent/D.Hr submits that he has no objection if an opportunity is afforded to the petitioner to contest the matter before the Executing Court.

In these circumstances, this Civil Revision Petition is

ordered as follows:

The revision petitioner/J.Dr is directed to appear before the Executing Court in E.P.No.45 of 2014 in O.S.No.65 of 2011 on the file of Senior Civil Judge, Sompeta, on 11.04.2016 and on his appearance, the Executing Court shall afford an opportunity to the Revision Petitioner to contest the EP and take all the pleas that are legally available to him and pass an appropriate order in the EP expeditiously. In case of petitioner failing to appear before the Executing Court, as directed, the Executing Court can proceed with the EP *ex parte*.

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

U. DURGA PRASAD RAO, J

Date: 29.03.2016

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRP.No.580 of 2016

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Dt. 29.03.2016

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