

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition no.3897 of 2015
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ORDER:
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This Civil Revision Petition under Article 227 of the Constitution of India by the Judgment Debtor is directed against the docket order dated 02.09.2015 whereunder the learned Senior Civil Judge, Rayachoty had returned the EA(SR).No.2412 of 2015 in EP.No.38 of 2014 in OS.No.15 of 2012 with the following office objection:

'How this petition is maintainable without appearance of J.Dr and warrants under Order. 21 R.37 C.P.C are pending against him. In view of decision in 2006(3) ALT 695. Hence returned.'

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the revision petitioner/Judgment Debtor ('the JDr', for short) and the learned counsel for the respondent/Decree Holder ('the DHr', for short). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The DHr having obtained a decree dated 30.04.2014 for recovery of money against the JDr had filed the E.P.No.38 of 2014 for realisation of the decree debt and sought arrest of the JDr under Order XXI Rule 37 of the Code of Civil Procedure, 1908. The JDr had filed a counter resisting the execution petition *inter alia* contending that he has no means to pay the decree debt. The DHr was examined as PW1 and he had exhibited his documents. Thereafter the EP was posted to 22.07.2015 for the evidence of the JDr. As the Presiding Officer was on leave on that day, the EP was adjourned to 14.08.2015. The EP was again posted to 21.08.2015. As the JDr and his counsel were not present on 21.08.2015, the right of the JDr to

adduce evidence was forfeited and the EP was adjourned to 24.08.2015 for hearing arguments. On 24.08.2015 orders on merits were passed and the Court of execution had directed issuance of arrest warrant against the JDr and posted the EP to 02.09.2015. While things stood thus, the EA(SR).2412 of 2015 was filed by the JDr before the Court below seeking to reopen the EP and permit him to adduce evidence on his side. As already noted, that application was returned by the Court below with the office objection, which is extracted supra. That order of the Court below returning the aforementioned EA(SR) of the JDr is now under challenge in this revision petition.

4. I have bestowed my attention to the facts and the submissions.

5. When an application like the one filed by the JDr was returned by the Court of execution with an office objection, the JDr either ought to have complied with the office objection or should have explained as to how the objection taken by the office of the Court is untenable and ought to have thus re-presented the application and ought to have requested the Court below to number the application and then consider and dispose it of on merits. Without doing so, the JDr had filed the present CRP before this Court.

6. The fact remains that the Court of execution had already passed order on merits holding *inter alia* that the JDr is liable for arrest and had already directed issuance of an arrest warrant against him. That order has become final and is not challenged in accordance with the procedure established by law. Had the JDr re-presented the application, which was returned with the office objection, either by complying with the objection or stating that the objection is not valid and need not be complied with, the application would have been numbered and disposed of by the Court below, within a reasonable time. However, for the failure on the part of the JDr to re-present the returned application as stated above and for his non appearance before the Court below, the Court below was obligated to pass an order in accordance with the procedure established by law.

7. Viewed thus, this Court does not find any merit in the revision petition.

8. Accordingly, the Civil Revision Petition is dismissed. Nevertheless, the JDr is at liberty to move an application before the Court of execution, if he so desires, to permit him to discharge the decree debt in instalments. It is needless to mention that in case such an application comes to be filed, the Court of execution shall give an opportunity of hearing to the DHr and dispose of the said application on merits and in accordance with the procedure established by law. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

16.02.2016
Vjl