

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3706 of 2016

ORDER:

- 1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India aggrieved by an order dated 30.06.2016 passed in O.E.P.No.96 of 2015 in O.S.No.184 of 2014 on the file of the Senior Civil Judge, Puttur.
- 2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in E.P.
- 3) The brief facts of the case are that the decree holders filed a suit for recovery of money which was decreed. As no money was paid, the decree holders filed E.P. seeking arrest and to commit the judgment debtor to civil prison.
- 4) The judgment debtor filed counter stating that aggrieved by the decree and judgment in O.S.No.184 of 2014 he filed an appeal before the X Additional District Court, Tirupati, along with an application for stay of the operation of the decree, which is pending. He also submits that he has been working as a lineman and that the decree holder filed the E.P. without following the procedure contemplated under Order 21 of C.P.C.

5) After considering the rival submissions made, the learned Senior Civil Judge, Puttur, allowed the execution petition and issued warrant of arrest against the petitioner. Aggrieved by the same the present revision is filed.

6) Learned counsel for the petitioner would submit that the petitioner is working as lineman in APSPDCL, Kondakindapalle Sub-Station, earning Rs.47,302/- per month and that he is willing to pay the entire decretal amount by way of attachment of his salary.

7) Learned counsel for the respondent submits that he has no objection for the same.

8) In Kalidindi Rama Raju v. Vijaya Bank¹ this Court formulated the principles, which are as under:

“ 1. Passing cryptic orders not based on reasons have to be avoided.

2. Courts are expected to be cautious while making order of arrest in execution of decree since it involves personal liberty.

3. Proper opportunity has to be given and necessary enquiry has to be made while making an order of arrest.

4. Courts may also examine whether other modes of recovery are available to the decree

¹ (2001) 2 An.WR 184 (A.P.)

holder and is it necessary to order arrest for recovery of the amount and whether judgment debtors are willfully and intentionally neglecting to discharge the decree debts and Courts may examine the relevant circumstances also in this regard.

5. Even while making an order of arrest in default of appearance of the judgment debtors, Courts have to *prima facie* satisfy themselves on the material placed before them that an order of arrest can be made.

6. Courts shall also fix the period for which the judgments debtors are to be kept in detention.”

9) In view of the judgment referred to above, the impugned order dated 30.06.2016 passed in O.E.P.No.96 of 2015 in O.S.No.184 of 2014 is hereby set aside.

10) At this stage learned counsel for the petitioner concedes that impleading the garnishee is not necessary and that this Court, at this stage itself can decide the issue of attachment of salary instead of remanding the matter back for the said purpose.

11) In view of the admission made by the learned counsel for the petitioner, the salary of the petitioner, who is working as a Lineman in A.P.S.P.D.C.L., Kondakindapalle Sub-Station, shall be attached in accordance with Section 60 of

C.P.C. Accordingly, the trial Court is directed to issue salary attachment warrant directing the garnishee to attach the salary of the petitioner in terms of Section 60 of C.P.C. and to remit the same to the credit of above E.P. on or before 5th of every succeeding month. In view of the above, the arrest warrant issued against the petitioner in O.E.P.No.96 of 2015 is hereby recalled.

12) With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, the Miscellaneous Petitions pending if any shall stand closed.



JUSTICE C. PRAVEEN KUMAR

18.11.2016
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