

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4661 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C. aggrieved by an order dated 11.08.2016 passed in E.P.No.148 of 2015 in O.S.No.692 of 2010 on the file of the Additional Senior Civil Judge, Tirupati.

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 holder filed a suit for recovery of money which was decreed on 08.04.2015 for an amount of Rs.3,31,160/- with interest at 12%p.a. from the date of filing of the suit i.e. 20.10.2010 till the date of decree and thereafter 6% on the principal amount of Rs.2,50,000/- till the date of realization. As no money was paid, the decree holder filed an E.P. seeking arrest and to commit the judgment debtor to civil prison.

4) The judgment debtor filed counter stating that he has been working as a Lecturer in S.G.S Arts College, Tirupati and that the decree holder filed the E.P. without following the procedure contemplated under Order 21 of C.P.C. It is also stated that after exhausting the remedy for realization

of the amount for attachment of the salary only, the execution petition seeking arrest can be filed.

5) After considering the rival submissions made, the learned Additional Senior Civil Judge, Tirupati, 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 Lecturer in S.G.S Arts College, Tirupati, getting Rs.80,000/- 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.

¹ (2001) 2 An.WR 184 (A.P.)

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 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.

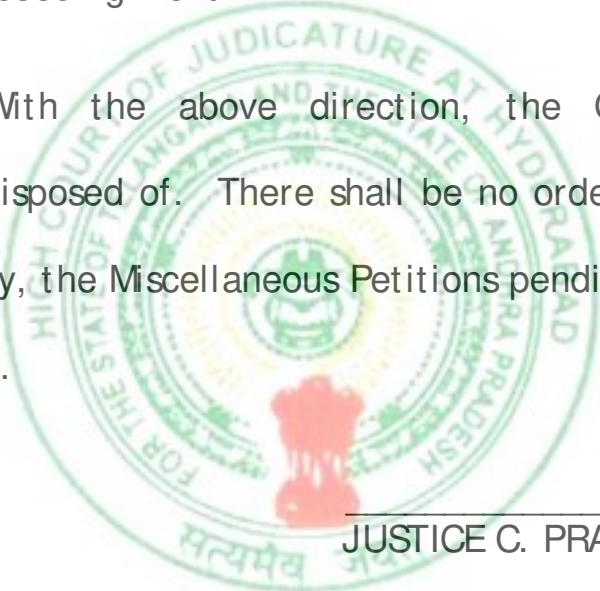
6. Courts shall also fix the period for which the judgments debtors are to be kept in detention.”

9) In view of the judgment referred to above, the impugned order dated 11.08.2016 passed in E.P.No.148 of 2015 in O.S.No.692 of 2010 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 back the matter 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 Lecturer in S.G.S Arts College, Tirupati, 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.

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

04.11.2016
gkv

