

**THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.1400 of 2016**

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**ORDER:** (per Hon'ble Dr. Justice B. Siva Sankara Rao)

The petitioner/deGREE holder maintained this revision petition impugning the order of the learned V Senior Civil Judge, City Civil Court, Hyderabad, in dismissing E.P.No.163 of 2014, against the served and non-appearing *ex parte* respondent No.1, seeking arrest of judgment debtors

1 and 2 (since dismissed against judgment debtor No.2 on 23.03.2015) and to commit them to civil prison in execution of the Award ABR/CF No.47 of 2012 of the Deputy Registrar of Chits/Arbitrator, Red Hills, Hyderabad, dated 29.10.2013.

The learned Senior Civil Judge after enquiry dismissed the execution petition for the relief of arrest of judgment debtor No.1 sought on the ground that the decree holder could not prove any of the means of judgment debtor No.1 to show that he is wilfully evading to pay the decree debt despite means and thereby he is liable to be arrested and sent to civil prison to recover the amount.

In the revision petition, it is the contention that despite the decree holder filed the evidence affidavit and the first respondent/judgment debtor failed to attend and contest and the affidavit shows the averment of means, the Executing Court dismissed the same for ordering arrest of judgment debtor No.1. In fact, the Executing Court in the order reflected the expression of the Apex Court

in **Jolly George Varghese v. The Bank of Cochin**<sup>[1]</sup> and following the same, the other expressions of this Court, as per which, it is *prima facie* for the decree holder to show that the judgment debtor having sufficient means wilfully evading to pay the decree debt, and in the absence of which, the question of shifting the burden on the judgment debtor or to pass any order saying the judgment debtor did not put forth his appearance to oppose the execution petition much less to enter the witness box, does not arise.

From perusal of the evidence affidavit, there is nothing to show that as on the date of filing the execution petition, judgment debtor No.1 got means and is wilfully evading to pay the decree debt, for what the income tax returns filed are relatable to the assessment year 2006 – 2007 and not for any relevant period, and even to say that he is

doing any business, there is nothing produced before the Executing Court much less any particulars of the number of Certificate of Registration of the business and even to say that he got the house property as mentioned in the chief affidavit, there is no proof to show that he had the house number in his name standing in that regard to consider as part of the means he has.

Having regard to the above, there is nothing to interfere with the reasoned order of the Executing Court by sitting in revision thereagainst. However, there is no bar for filing fresh execution petition showing means. This observation will no way debar the decree holder to file proper application for recovery of the decree debt by any of the modes contemplated under Order XXI Rule 11 of the Code of Civil Procedure, 1908.

The civil revision petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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**SANJAY KUMAR, J**

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**Dr. B. SIVA SANKARA RAO, J**

Date:14.06.2016

GJ

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[\[1\]](#) AIR 1980 SC 470