

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL REVISION PETITION No. 2098 OF 2016

ORDER:

This civil revision petition is arising out of order dated 16-12-2015 passed in E.P.No. 139 of 2014 in O.S.No. 53 of 2010 on the file of the Court of Senior Civil Judge, Bobbili (for short, 'the lower Court').

2. The revision petitioner is the judgment debtor and the respondent is the decree holder in the above E.P.No. 139 of 2014 filed under Order 21 Rules 37 and 38 of the Code of Civil Procedure (for short, 'C.P.C.').

3. The decree holder has filed an affidavit before the lower Court stating that he has demanded the judgment debtor several times for payment of the decretal amount. Though the judgment debtor has got sufficient means to pay the E.P. amount, he is evading to pay the same. Having a house in Poolbagh, Bobbili, bearing D.No. 147-64 of two storied building worth Rs.28.50 lakhs and he has got Ac. 2.60 cents of land in Dubbagadda, he has not repaid the amount. He is trying to alienate the property and leaving the jurisdiction the Court to evade the payment.

4. The judgment debtor has filed his counter affidavit before the lower Court stating that the decree holder has filed an application in the suit seeking attachment before judgment and, accordingly, his property was attached. It is further stated that when the decree holder is taking steps through attachment and sale of his landed property, simultaneously he cannot proceed for his arrest and detention in civil prison. It is further stated that he has no *mala fide* intention to evade the suit debt and he is not trying to abscond from the jurisdiction of the Court and that there are no sufficient grounds for his arrest and detention in civil prison.

5. The point for consideration in this matter is:

"Whether the order passed by the lower Court is in accordance with the provisions under Order 21 Rules 37 and 38 and Section 51 of C.P.C.?"

6. Heard the learned counsel for the petitioner and the respondent and perused the material on record.

7. The petitioner has filed the present revision under Article 227 of the Constitution of India challenging the order of the lower Court as arbitrary and illegal. The grounds urged by the petitioner are that the respondent has proceeded for his arrest without proceeding against the property already attached in the execution petition. It is further contended that there are no grounds for arrest of the petitioner.

8. Heard the arguments of learned counsel for the petitioner. There is no representation on behalf of the respondent, as such his arguments are deemed heard.

9. The lower Court allowed the E.P. *inter alia* holding that the judgment-debtor, having means to pay the E.P. amount, has refused to pay the E.P. amount.

10. Though notice has been served to the respondent-decree holder, no one appeared on his behalf in this civil revision petition.

11. It is appropriate at this juncture to refer to Section 51 of C.P.C. which reads as under:

"51. Powers of Court to enforce execution: Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison 1[for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that Section];

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require :

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied._

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,_

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account."

12. The lower Court ought to have considered the provisions under Section 51

(a) (b) of C.P.C. before issuing the arrest warrant against the petitioner. The lower Court, though in para No. 11 of its order referred to Section 51 of C.P.C., has not considered the said provision on any acceptable evidence that the petitioner is likely to abscond or leave the local limits of the jurisdiction of the Court or he has, after institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property. On the other

hand, the lower Court has observed that the petitioner has no bad faith to leave the jurisdiction or to sell his property. In fact, when the petitioner has refused or neglected to pay the E.P. amount, he can be arrested for realization of the amount decreed. The lower Court, without making any observations with regard to the likelihood of absconding or leaving the local limits of the jurisdiction of the Court or has dishonestly trying to transfer or conceal or remove any part of his property, or committed any other act or bad faith in relation to his property, came to the conclusion that the petitioner is liable for arrest. The observations of the lower Court on the provisions under Section 51 of C.P.C. are not in accordance with law and it is against the provisions under Section 51 of C.P.C. The lower Court has jumped to the conclusion that since the petitioner is liable to pay the decretal amount and as he did not pay the amount, he is liable for arrest. The cryptic order of the lower Court is not entitled for acceptance as it is not in accordance with the provisions of Section 51 of C.P.C. Therefore, I do not see any merits in the order passed by the lower Court and it is liable to be set aside.

13. Having regard to the facts and circumstances of the case, it is obvious that the judgment debtor has not preferred any appeal so far challenging the decree and judgment of the lower Court and since the E.P. is filed for execution of the decree, ends of justice would be met if half of the decretal amount is deposited before the lower Court. Learned counsel for the petitioner submits that in the event of the judgment debtor preferring any appeal against the decree and judgment of the lower Court, the judgment debtor reserves his right for payment of the remaining half of the amount to the decree holder subject to the result of the appeal.

14. Considering the request of learned counsel for the petitioner, the judgment debtor is directed to deposit half of the decretal amount within six weeks from the

date of receipt of a copy of this order and the decree holder may proceed against the property of the judgment debtor for the remaining amount.

15. With this observation, the civil revision petition is disposed of. Pending miscellaneous petitions, if any, in this revision petition shall stand closed in consequence. No order as to costs.

Date: 12-08-2016.
JSK

G.SHYAM PRASAD, J.

