

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2554 of 2015

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the 1st respondent/1st JDr is filed assailing the orders dated 26.06.2015 of the learned Senior Civil Judge, Chirala passed in EP.no.30 of 2014 in OS.no.123 of 2010 filed under Order XXI Rules 37 and 38 of the Code requesting to order arrest of the 1st JDr and commit him to civil prison to enable the petitioner/DHr to realize the decree debt.

2. I have heard the submissions of the learned counsel for both the sides. I have perused the material record.

3. The facts, as per the submissions, in brief, are as follows:

While dismissing the suit for specific performance, the trial Court granted the alternative relief of refund of the advance amount in a sum of Rs.2.00 lakhs to the plaintiff with interest at 12% per annum thereon from the date of agreement of sale dated 16.06.2009 till the date of filing of the suit and thereafter at 6% per annum from the date of the suit i.e., 15.12.2009 till the date of realization. On failure of the defendants 1 and 2 to pay the same, the DHr filed the aforementioned EP before the Court below seeking arrest of the 1st defendant/revision petitioner herein. On merits, the Court below after overruling the objections of the revision petitioner had ordered his arrest and directed that he be sent to civil prison. Aggrieved of the said orders, the present revision petition is filed.

4. The learned counsel for the revision petitioner/1st JDr while reiterating his stand that he has no means or income to discharge the decree debt would contend that the order of the Court below is unsustainable.

5. On the other hand, the learned counsel for the DHr while supporting the

orders of the Court below would submit that there is sufficient evidence adduced before the court below that the revision petitioner is having a RCC building worth Rs.10.00 lakhs and also the property, which is the subject matter of the agreement of sale and that, therefore, the Court below rightly ordered for the arrest of the revision petitioner/1st JDr. The revision petitioner, pursuant to the interim orders granted by this Court, had deposited half of the decretal amount within the time granted by this Court, but did not pay any amount thereafter as per the submissions made before this Court.

6. I have perused the material record including the order impugned, which is a well reasoned order. In a case of this nature, where admittedly the defendants sought to sell their property to the plaintiff under the suit agreement of sale, they cannot be heard to say that they did not own any immovable property. Moreover, the Court below after analyzing the facts correctly and the evidence in proper perspective recorded a finding supported by reasons that the 1st JDr has got means to pay the decree debt, but, he is willfully avoiding to pay the decree debt to delay and defeat the just claim of the DHr and that, therefore, it is a fit case to order arrest of the 1st JDr to enable the DHr to realize the decree debt. Therefore, I do not see any reason to interfere with the order impugned.

7. For the aforesaid reasons, the Civil Revision Petition is dismissed. However, considering the submissions of the learned counsel for the revision petitioner, the revision petitioner is directed to file an undertaking affidavit before the Court below within two (02) weeks from the date of the receipt of a copy of this Order undertaking to discharge the entire balance decree debt before the Court below within two (02) months thereafter. On failure to file such undertaking affidavit or failure to comply with the undertaking in the affidavit, the Court below shall issue a warrant as per its orders, which are now confirmed in this revision for arrest and detention of the revision petitioner in a civil prison as per the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand

closed.

21st March, 2016
Vjl

M.SEETHARAMA MURTI, J