

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.2688 of 2016

ORDER:

- Heard Sri D.Bhaskar Yadav, learned counsel for petitioner.
- The judgment debtor in E.P.No.124 of 2015 is the revision petitioner.

The revision is directed against the order dated 29-03-2016 in E.P.No.124 of 2015. The Executing Court through the order impugned in the revision directed arrest of revision petitioner.

The Executing Court on the point framed for determination held as follows:-

RW.1 filed his chief examination affidavit in the same lines as that of his counter.

In his cross-examination, he admitted that he lived at H.No.C/B.57, C.Camp, Kurnool and received summons at that house. He further admitted that he lives at Kurnool itself and do up and down from Kurnool to Panyam to attend office. He further admitted that he is liable to pay amount under the execution petition and he will pay the same and may be deducted from his salary.

In the suit, the summons were served on the J.Dr. at the address where he resides at Kurnool and there is no denial by J.Dr. in this regard. The execution petition is also filed against the J.Dr. showing his address at Kurnool, but as the J.Dr. evaded to receive the said notices, the summons were sent to the office address where the J.Dr. is working i.e. at the office of Tahsildar's office, Panyam. On perusal of the chief examination affidavit of J.Dr., he has merely shown his address as resident of Panyam village, Kurnool district, but no specific house number is furnished as to in which house he is residing at Panyam village. In his cross-examination, J.Dr. stated that he lives at D.No. 7-125 at Panyam village but, the same is not established. Further, when the J.Dr. has taken the plea that the execution petition is hit by jurisdiction point of view, the burden is on the J.Dr. to prove that he is

residing at Panyam village. But, the J.Dr. failed to prove that he is resident of Panyam village. Accordingly, the plea of J.Dr. that the execution petition is not maintainable on the point of territorial jurisdiction is rejected. With regard to liability of the J.Dr. to pay decretal amount, it is clear admission by J.Dr. that his salary should have been attached instead of seeking for his arrest for payment of decretal amount. But, it is contended by learned counsel for D.Hr. that it is the choice of the D.Hr. to seek for execution of decree through any of the modes available under Law. It is further contended that payment of decretal amount by attaching the salary of the J.Dr. would take considerable time. Thus, by non-denial of J.Dr. for his liability towards D.Hr. and further and non denial as to his means, made clear the case of the D.Hr. Therefore, the execution petition deserves to be allowed.

In the result, the E.P. is allowed with costs directing the Amin/Bailiff to produce the J.Dr. before this Court on or before 29-04-2016 on payment of process in order to inform him that he may apply to be declared as insolvent and if the J.Dr is not inclined to file an application for declaring him as insolvent, send the J.Dr. to civil prison for three months on payment of subsistence allowance.”

Hence, the revision.

On 17-06-2016, this court granted stay of arrest subject to revision petitioner depositing 50% of E.P. amount within four weeks from 17-06-2016.

The notice on respondent is served and the respondent is not represented by counsel.

Sri D.Bhasker Yadav, counsel appearing for revision petitioner, firstly tried to convince this court that the findings recorded by the Executing Court are *prima facie* not supported by evidence but are rendered only for the purpose of ordering arrest of revision petitioner. Alternatively it is submitted that if reasonable instalments are granted, the balance of E.P. amount

will be paid by revision petitioner.

As already noted on the first point urged by learned counsel, this court is of the view that the revision petitioner is not successful in bringing home the contention that the findings have been recorded without material. In the considered view of this court, the point framed by the Executing Court is broad, still while considering the issue the Executing Court has focused on the right lines. The challenge in the revision fails and accordingly rejected.

Adverting to second submission, this court is of the view that once the decree is passed and E.P. is filed, considering grant of instalments ought not to be considered or encouraged. However, the revision petitioner has proved bonafides by complying with the condition imposed by this Court on 17-06-2016.

Having regard to above circumstances, the Civil Revision Petition is disposed of by this order.

The findings impugned in the revision are held tenable. The stay granted on 17-06-2016 is directed to be continued for a period of twelve weeks from today and the revision petitioner is given liberty to pay the balance amount alongwith a memo and seek closing of the E.P.

The Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

S. V. BHATT, J

Dt: 18-07-2016

Prv