

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.6256 of 2012

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for short) by the Judgment Debtor is directed against the order dated 12.10.2012 of the learned III Additional Junior Civil Judge, Nellore passed in EP.No.180 of 2011 in OS.No.1252 of 2005 filed under Order XXI Rule 38 of the Code requesting to issue warrant of arrest against the said judgment debtor for realisation of the decree debt.

2. I have heard the submissions of the learned counsel for the revision petitioner/Judgment Debtor ('the JDr', for short) and the learned counsel for the respondent/Decree Holder ('the DDr', for short). I have perused the material record.

3. The introductory facts, in brief, are as follows:

The DDr had obtained a decree for payment of money against the JDr. Since the Decree debt was not paid, the DDr had applied for execution for arrest and detention of the JDr in civil prison. In the affidavit filed in support of the execution petition, the DDr had stated that the JDr is residing in a rented accommodation near RTA Office by paying Rs.4,500/- per month as rent and that he is hale and healthy and is doing real estate business and thandal business by way of collecting and lending money on higher interest rates and that the JDr's son, who is an M.Tech, is employed and that his daughter is

studying Medicine (BDS) in Narayana Medical College, Nellore and that he is spending lot of money on his daughter's education and that he is having properties and sufficient income to pay the decree debt, but, he is wantonly evading to discharge the decree debt and that, therefore, he is liable to be arrested and committed to the civil prison. The JDr having filed a counter had resisted the EP inter alia contending that as on the date of the filing of his counter, he is 62 years of age and that he is dependant upon his wife and that he is suffering from heart ailments and is undergoing regular treatment for the said ailments and that he has no capacity to earn and that he is not in a position to pay the entire decree debt in lumpsum and that he has no means to pay the amount claimed in the EP and that, therefore, he is not liable for arrest. During the course of enquiry before the court below, the DHr and the JDr were examined as PW1 and RW1. On merits, the Court below overruled the objections in the counter of the JDr and had ordered for his arrest and directed issuance of a warrant against him on payment of process by the DHr. Aggrieved of the said orders, the present CRP is filed by the JDr.

4. Now the point for determination is –

‘Whether the DHr had not made out valid and sufficient grounds for ordering the execution of the decree by arrest and detention of the judgment debtor in the civil prison as per the procedure established by law? And, if so, whether the impugned order is liable to be set aside?’

5. **POINT:**

5.1 The facts of the case are already stated supra. Order 21

of the Code contemplates the execution of a decree by ordering arrest of the judgment debtor and Section 51 of the Code lays down that the Court may, on the application of the decree holder, order execution of the decree inter alia by ordering arrest and detention of the judgment debtor in prison where arrest and detention is permissible. The proviso to the said section states that where the decree is for 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 and unless the court, for reasons to be recorded in writing, is satisfied among other things, that the judgment debtor is or has had since the date of decree the means to pay the amount of the decree or some substantial part thereof and had refused or neglected to pay the same.

5.2 Having reiterated the defence pleaded before the court below, the learned counsel for the JDr would contend that the order of the Court below is contrary to law and weight of evidence; and that the JDr is not having movable and immovable properties; and that the DHr also could not establish that the JDr is having any properties; and that the JDr is unemployed; and that he has no means to pay the decree debt; and that inspite of his defence that he is aged more than 60 years and that he is suffering from heart ailments and receiving treatment regularly, the Court below had erroneously ordered his arrest; and that the court below had failed to see that the DHr had failed to adduce necessary evidence to establish not

only the means and capacity of the JDr to pay the decree debt but also that inspite of having sufficient means the JDr is wilfully evading to pay the decree debt.

5.3 The learned counsel for the JDr had further pointed out from the deposition of PW1 that he does not know whether the JDr is paying any rent of Rs.4,500/- per month and that he had also stated that he had earlier filed an execution petition and the same was dismissed and that the DHr has admitted that he had not filed any documents to show that the JDr is having properties and that on the other hand, RW1/the JDr in his testimony had stated that he is paying rent of Rs.1,000/- per month for the rented accomodation and that his wife is doing business in sarees by going door to door and that this evidence shows that there is no sufficient evidence brought on record to show that the JDr is having sufficient means to pay the decree debt.

5.4 On the other hand, the learned counsel for the DHr while supporting the order of the Court below had contended that the JDr is a business man and is also gainfully employed and that out of Ac.3.00 cents of land he owns at Amancherla village, he had sold Ac.1.50 cents to third parties at the time the EP was filed before the court below and that he is getting an income of Rs.75,000/- per year and that his daughter is pursuing a Course in Bachelor of Dental Surgery in Narayana Medical College and that his son is also studying M.Tech as per the evidence brought on record and that the fact that he is meeting the educational expenses of his children who are pusuing higher education in private institutions would show that he is having

means to pay the amount due under the decree in lumpsum but he is refusing and neglecting to pay the same to delay and defeat the just claim of the DHr. He would also submit that the JDr is depending upon his wife also would show that his wife is also an earning member and that he need not contribute any money from his income for the maintenance of the family.

5.5 I have bestowed my attention to the facts and given earnest consideration to the submissions. In **Aluru Venkatarao v. Kodali Venkata Sri Krishna**^[1] this Court having referred to a decision in **Jolly George Varghees's** case (AIR 1980 SC 470) had observed that if the decree holder is able to produce some material or evidence regarding the source or means of the judgment debtor that may normally be sufficient to pay the decretal amount and also the status, occupation and the assets of the judgment debtor, then whether such means or source etcetera are not sufficient to pay the decretal amount being a fact especially within the knowledge of the judgment debtor, the burden of proving the same would be on the judgment debtor in view of Section 106 of the Evidence Act. Nevertheless, it is for the decree holder to place sufficient evidence in the first instance regarding the sources or means of the judgment debtor that may normally be sufficient to pay the decretal amount or a substantial part thereof.

5.6 Though the copy of the execution petition is not filed, according to the submissions made at the hearing, the amount

due under the execution petition is Rs.85,033/-. The DHr in his evidence reiterated the facts affirmed by him in his affidavit filed in support of the execution petition. From the evidence brought on record, particularly the cross examination of the JDr, it is clear that his son is pursuing M.Tech and daughter is pursuing BDS course in Narayana medical college, Nellore. Though he had stated further in his cross examination that his son is studying on stipend and that his daughter is studying on fees reimbursement basis, he did not produce any documentary evidence from the educational institutions of his son and daughter to substantiate his said contentions. As rightly held by the Court below, under the fee reimbursement scheme, the education fee of the daughter has to be necessarily paid in the first instance by the JDr and the reimbursement would be made thereafter. Therefore, the fact that the JDr is paying educational fee of his son and also of his daughter who is pursuing BDS course in Narayana College cannot be disputed. The fact that the JDr is able to meet huge higher educational expenses of his children, one of whom is pursuing BDS Course in a private medical college is sufficient to infer in the positive that he is having income and sources of income. The copy of the Ration Card filed with the material papers would show that his annual income is Rs.40,000/- and that his occupation is farmer and that his age when the card was issued in the year 2009 was 53 years and that he is having Indane Gas connection with double cylinder facility. Therefore, his contention that he is unemployed and not having any income or sources of income

cannot be countenanced. Further, what is to be noted is that the defence of the JDr is that he is not in a position to pay the decree debt in a lumpsum. It is not his case that he is not in a position to pay the decree debt at all. Even though the decree was granted long time back and the EP was filed in the year 2011 he did not even make sincere attempts to discharge the decree debt even in instalments to show his bona fides. As per the provision in Section 51 of the Code where the decree is for the payment of money, execution by detention of the JDr in prison can be ordered after giving the JDr an opportunity of showing cause why he should not be committed to prison and on the satisfaction of the Court that the JDr 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 neglected to pay the same. The very defence that the JDr is not able to pay the entire decree debt in a lumpsum would only indicate that he has got means to pay a substantial portion of the decree debt at one time or in instalments. His failure to pay even a part of the decree debt inspite of lapse of several years would further manifest that inspite of having means to discharge a substantial portion of the decree debt he is refusing and neglecting to pay the same. On an overall consideration of the evidence on record, a safe conclusion can be arrived at that the DHr had sufficiently established the case by adducing the required standard of evidence for ordering the execution of the decree by arrest and detention of the judgment debtor in a civil prison.

6. For all the reasons assigned, this Court is of the well considered view that the impugned order of the Court below suffers from no legal infirmity. Therefore, this Court is of the well considered view that the order impugned directing the arrest of the JDr and further directing issuance of a warrant of arrest against him is sustainable both under facts and in law. The point is answered accordingly.

7. In the result, the Civil Revision Petition is dismissed. However, the JDr is given six (06) weeks time from the date of the receipt of the copy of this order to pay the entire decree debt with interest and costs. On failure of the JDr to do so, the court of execution shall proceed further in the matter by issuing a fresh warrant of arrest against the JDr in accordance with the procedure established by law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

Date: 22.02.2016

Note: Issue CC in three days.

(B/o)

Vjl