

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.3914 OF 2011

ORDER:

The order dated 30.06.2011 in E.P.No.220 of 2010 in O.S.No.732 of 2007 passed by the Principal Junior Civil Judge, Srikakulam, is challenged in this revision petition on the ground that the arrest of the Judgment Debtor is ordered without the Decree Holder establishing and without there being any material to come to conclusion that the JDr is capable of paying the decretal amount and he is evading to pay the same.

Learned counsel for the petitioner submits that merely basing on an advertisement issued in the newspaper with respect to the business, which is being run by the members of the family of the petitioner/JDr., the Court below had come to conclusion that the petitioner/JDr., has means to pay but he is evading to pay the decretal amount. It is also the contention of the learned counsel for the petitioner that the advertisement was not marked in the E.P. proceedings but the same was taken into consideration.

On the other hand the learned counsel for the respondent opposed the revision petition and supports the order of the Court below.

Having considered the rival submissions and having perused the order in revision, the Decree does not suffer from any irregularities warranting interference of this Court. As can be seen from the order impugned the Judgment and decree was passed on 16.11.2009 for a sum of Rs.73,333/-with future interest. The suit is based on a promissory note, which is a negotiable instrument. The appeal filed by the petitioner stands dismissed. Therefore, the judgment and decree dated 16.11.2009 became final. The respondent/DHr., filed Execution Proceedings in 2010 itself. In E.P. proceedings the DHr., examined himself in chief-examination and deposed that the JDr., has sufficient properties and business in Srikakulam town and he is running a cloth business

under the name and style of Apsara Gents Corner and he denied the suggestion that the JDr., is depending on his father-in-law. In the cross-examination JDr., has admitted that Apsara Silk Centre in Srikakulam town is their joint family property and on 12.05.2011 he gave an advertisement in the District Addition of Sakshi daily newspaper with his photograph. Further, the contention raised by the petitioner/DHr., that the advertisement was given by his family members, was not believed by the Court below. When it is admitted by the petitioner/JDr., himself that the advertisement was issued and he is connected with the business, the plea which he has made that he has no means to pay the decretal amount cannot be accepted. In that view of the matter, the order of the Court below does not suffer from illegality and irregularity warranting interference of this court. However, I am inclined to accept the plea made on behalf of the petitioner that he may be permitted to pay the decretal amount in instalments.

Taking into consideration of the fair submission made on behalf of the petitioner, the E.P. amount due by the petitioner shall be paid in five instalments and the first instalment starting with 15.02.2016 and thereafter on or before 15th of every month. For the purpose of convenience the first instalment has been fixed at Rs.16,000/- and the balance amount in equal amounts. In the event of petitioner's failure to pay any of the instalments, the execution proceedings may go on. It is made clear that the amount paid already shall be given credit to.

With the above direction, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated: 29.01.2016.

Ssv