

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5795 of 2011

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 petitioner/judgment debtor, is directed against the order dated 19.10.2011 of the learned Junior Civil Judge, Yellamanchili passed in E.P.No.73 of 2010 in O.S.No.147 of 2005.

2. I have heard the submissions of the learned counsel for the revision petitioner/judgment debtor and the learned counsel for the respondent/decreed-holder. I have perused the material record.

3. The facts that are necessary for consideration, in brief, are as follows:-

The respondent/decreed-holder, having obtained the decree against the petitioner/judgment debtor, had filed the execution petition for recovery of money. In the said execution petition, the decree-holder sought arrest of the judgment debtor for realisation of the decree debt. After enquiry and on merits, the Court executing the decree had ordered arrest of the judgment debtor and directed issuance of warrant of arrest against him. Aggrieved of the said orders, this revision petition is filed by judgment debtor *inter alia* contending that the judgment debtor has no means to pay the decree debt; and that the onus is upon the decree holder to prove that the judgment debtor has the means and capacity to satisfy the decree debt; and that on the failure of the decree holder to prove the means of the judgment debtor and also the wilful negligence on the part of the judgment debtor to pay the decree debt, the executing Court ought not to have ordered arrest of the judgment debtor; and that the said Court had wrongly cast the onus upon the judgment debtor merely on the suggestions given in the cross-examination; and that, therefore, the order impugned is liable to be set aside.

4. On the other hand, the learned counsel for the respondent/decreed-holder would contend that the decree-holder is examined as PW1; and that exhibits P1 to P3 – the certified copies of the registered sale deeds are exhibited to prove the means and capacity of the judgment debtor to satisfy the decree

debt; and that inspite of the fact that the judgment debtor is having valuable immovable property and means to satisfy the decree debt, he did not pay the decree debt; and that in the facts and circumstances, his contest that he has no means to pay the decree debt would only lay bare that he is wilfully neglecting to pay the decree debt; and that, therefore, the executing Court had rightly appreciated the facts and evidence; and had appropriately allowed the execution petition and that the Court below had, correctly and as per law, directed for issuance of a warrant of arrest against the judgment debtor; and hence, the order impugned brooks no interference.

5. I have given earnest consideration to the submissions and the facts. On a careful perusal of the record, this Court is satisfied that the trial Court below had considered the facts correctly and the evidence in proper perspective before recording a finding that the judgment debtor is having means and is wilfully neglecting to pay the decree debt and before directing for issuance of a warrant of arrest. Therefore, this Court finds that there is no merit in the civil revision petition and the same is liable to be dismissed. Be that as it may, a perusal of the interim orders of this Court dated 24.01.2012 would show that at the time of granting stay, this Court directed the judgment debtor to pay Rs.20,000/- towards the decree debt. Now it is represented by the learned counsel for the revision petitioner that the said amount is paid and that the balance amount is payable and that the execution petition is still pending before the Court below and that in view of the interim orders granted by this Court, no further proceedings have taken place.

6. Having regard to the further submissions, this Court is satisfied that this civil revision petition can be dismissed granting time of one month from the date of the receipt of a copy of this order to the judgment debtor to pay the balance decree debt to the decree holder.

7. Accordingly, the civil revision petition is dismissed granting to the petitioner/judgment debtor one month time from the date of the receipt of a copy of this order to pay the entire balance of the decree debt due to the decree-holder. It is made clear that on failure on the part of the judgment debtor to pay the entire balance decree debt to the decree-holder within the

time now granted, the Court of execution shall proceed with further execution proceedings by re-issuing the warrant of arrest against the judgment debtor as per the orders impugned and in accordance with the procedure established by law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand dismissed.

M.Seetharama Murti, J

01st February, 2016
Bvv