

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 220 OF 2016

ORDER:

The petitioner, who is the judgment debtor filed the present Civil Revision Petition under Section 115 of C.P.C. aggrieved by the order dated 09.10.2015 passed in E.P.No.5 of 2015 in O.S.No.68 of 2012 on the file of the Senior Civil Judge, Puttur, wherein the E.P. filed by the respondent/decreed holder was allowed ordering attachment of salary of the petitioner/judgment debtor.

The facts which lead to filing of the present Civil Revision Petition are as under:

The decree holder filed O.S.No.68 of 2012 for recovery of money which was settled before the Lok Adalath on 27.04.2013. Both the parties agreed to settle the dispute on payment of Rs.1,20,000/- by the judgment debtor within six months from the date of award, failing which the decree holder is entitled to claim the entire amount of Rs.2,04,949/- by getting the award executed through E.P.

Since the award of the Lok Adalat was not complied with, the decree holder filed E.P.No.5 of 2015. During the course of trial the decree holder examined himself as PW.1, where as the judgment debtor, who was working as Junior Assistant, examined RWs.1 to 3. He also got marked Ex.R1 receipt showing payment of Rs.50,000/-. After considering the evidence on record, the trial Court allowed the E.P. Challenging the same the present Civil Revision Petition is filed.

Learned counsel for the petitioner/judgment debtor contends that the petitioner made part payment of Rs.50,000/- to which the decree holder issued a receipt. Hence, he submits that the payment of entire suit amount of Rs.2,04,949/- as claimed by the decree holder would not arise and the amount of Rs.50,000/- paid by him needs to be deducted from the amount agreed to be paid pursuant to a settlement. The same is disputed by the learned counsel for the respondent/decreed holder stating that no amount was paid and if really such an amount is paid nothing prevented the petitioner from producing evidence to that effect.

In order to appreciate the same it would be useful to refer to the evidence which is available on record.

The judgment debtor, who examined himself as RW.1 stated on oath that he has to pay the entire due amount as per the award dated 27.04.2013 and he also admits that if he fails to pay the amount the decree holder can recover the entire suit amount. He further deposed that he is a government employee earning Rs.47,446/- per month and his mother is also a pensioner. Insofar as payment of Rs.50,000/- is concerned, RW.1 in his evidence admits that he did not inform about the same to his counsel nor did he mention the same in the award (Ex.R1). He further submits that he himself scribed Ex.R1-receipt and he claims to have borrowed the said amount from his friends. RW.2, who claims himself to be the attester of Ex.R1-receipt showing payment of Rs.50,000/- to decree holder, admits that he does not know reading and writing and he is not aware about the contents of Ex.R1. However, he admits that he attested Ex.R1 on 10.10.2014 at Gandlamitta centre. He pleaded ignorance of the scribe of Ex.R1. Apart from that he also admits that he does not know the contents of his chief affidavit. Insofar as the evidence of RW.3 is concerned the same was eschewed from consideration as he did not appear before the court and got himself subjected to cross examination.

A perusal of the evidence of RWs.1 and 2 makes it clear that Ex.R1-receipt claims to have been executed on 10.10.2014 and RW.1 is the scribe of Ex.R1 which was attested by RW.2. But the evidence of RW.1 goes to show that the said Ex.R1 was executed at the house of decree holder, where as the evidence of RW.2 show that it was executed at Gandlamitta centre. It is nobody's case that the house of

decree holder is at Gandlamitta centre. As stated earlier, RW.2 admits that he does not know the contents of his chief affidavit and also not aware about the contents of Ex.R1-receipt showing payment of Rs.50,000/-. If really, RW.2 was present at the time of execution of Ex.R1 he could have atleast referred to the name of the scribe of Ex.R1.

From the above, it is clear that except the oral evidence there is no other material to show that judgment debtor paid Rs.50,000/- to the decree holder. Even assuming that there was payment, it is the duty of the judgment debtor to bring the payment of amount towards discharge of award amount to the notice of the Court and get it recorded to the credit of suit or E.P., if E.P. is filed.

Order 21 Rule 2 (1) of C.P.C. envisages that where any money payable under a decree of any kind is paid out of Court, or a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree holder, the decree holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

Order 21 Rule 2 (2A) envisages that no payment or adjustment shall be recorded at the instance of the judgment debtor unless

- a) the payment is made in the manner, provided in Rule 1; or
- (b) the payment or adjustment is proved by documentary evidence; or
- (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of Rule 1, or before the Court.

Dealing with the said issues, the Apex Court in *Sultana Begum v. Prem Chand Jain*^[1] observed as under:

“It is no doubt open to the parties to adjust or compromise their rights under the decree, but if it amounts to adjustment of decree, it must be reported to the Court whose duty it is to execute the decree so that, that Court may record or certify the same. If it is not done, the Court before whom the execution proceedings are initiated will proceed to execute the decree. It is not every time that the decree-holder and judgment-debtor enter into a compromise after the decree.”

In *K.Sitarama Rao v. D.Usha Sundari*^[2] the Apex Court held that the law enjoins that all payment out of Court shall be brought to the notice of the Court which passed the decree and they have to be certified by that Court under Order XXI Rule 2 C.P.C. Nothing prevented the judgment debtors including the revision petitioner from approaching the Court below and seeks necessary certification. Having failed to do so, the petitioner cannot now turn round and say that respondent No.1 has committed wrong.

As stated earlier, the judgment debtor failed to prove that he has made any part payment. Since has neither adduced any evidence nor did he inform about the payment to the Court.

For the aforesaid reasons and having regard to the judgments referred to above, I see no reasons to interfere with the order under challenge.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

^[1] AIR 1997 SC 1006

^[2] (1997) 6 ALT 192