

THE HON'BLE SRI JUSTICE A.V. SESA SAI

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CIVIL REVISION PETITION No.4714 OF 2015
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ORDER:

This Revision filed under Section 115 of Code of Civil Procedure (herein after, 'the C.P.C.'), challenges the order dated 12.10.2012 passed by the Court of the Senior Civil Judge, Chirala, Prakasam District.

2. Heard Sri Naga Praveen Vankayalapati, learned counsel for the petitioner/judgment debtor and Sri D.Krishna Murthy, learned counsel for the respondent/decree holder, apart from perusing the material available before this Court.

3. The respondent herein instituted O.S.No.22 of 2012 for recovery of amount against the petitioner on the foot of a promissory note and the said suit was decreed. Seeking enforcement of the said decree, respondent herein filed E.P.No.82 of 2014 before the Court of Senior Civil Judge, Chirala, under Order 21, Rule 37 and 38 C.P.C. and Section 51 of the C.P.C. The learned Judge passed the impugned order of arrest in the said E.P. The said order is under challenge in the present Civil Revision Petition. The learned counsel for petitioner contends that the impugned order is erroneous and contrary to law. It is also submitted that the Court below lost sight of the fact that there are no *malafides* on the part of the petitioner/judgment debtor and that there are no properties also. It is also the submission of the learned counsel that the decree holder ought to have adopted the alternative mode of recovery instead of asking for arrest of the petitioner.

4. On the contrary, it is contended vehemently by learned counsel for the decree holder/respondent herein that the learned Senior Civil Judge is perfectly justified in passing the impugned order and the same is in accordance with the object and intention behind the Order 21, Rule 37 and 38 and Section 51 of the C.P.C. It is also submitted that the learned Senior Civil Judge, after elaborately going through the

entire material available on record, passed the impugned order and in the absence of material irregularity in the impugned order, the petitioner herein is not entitled for indulgence of this Court under Section 115 of the C.P.C.

5. The material available before this Court manifestly discloses that the decree rendered by the Court below became final and the petitioner herein did not assail the decree before any Appellate Forum. A perusal of the impugned order succinctly discloses that in support of his stand, the decree holder filed sufficient material before the Court below to establish that despite having means to discharge debt, the petitioner herein intentionally evaded to pay the amount due. The impugned order further discloses that the petitioner herein, during the course of cross-examination, categorically admitted that he has 3.00 acres of wet land at Karamchedu Village. The contention of the learned counsel for petitioner that the decree holder ought to have chosen alternative mode of recovery cannot be sustained in view of the language employed under Order 21, Rule 30 of the C.P.C., which reads as under:

“30. Decree for payment of money:- Every decree for the payment of money including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.”

6. It is also required to be noted that this Court, while ordering notice to the respondent, granted interim stay of all further proceedings including arrest of the petitioner in E.P.No.82 of 2014 subject to the petitioner depositing half of the E.P. amount within a period of six weeks and the petitioner herein has failed to comply with the condition so imposed by this Court.

7. In view of the above reasons, this Court is of the opinion that the petitioner herein is not entitled for any indulgence of this Court under Section 115 of the C.P.C.

8. For the aforesaid reasons, Revision Petition is dismissed. It is also made clear that the interim order passed earlier by this Court on 07.11.2015 stands dissolved. No order as to costs.

9. Miscellaneous petitions pending consideration, if any, in the Revision Petition shall stand closed in consequence.

A.V.SESHA SAI, J

22.01.2016

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