

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4958 OF 2011

ORDER :

Heard counsel for the petitioner. None appears for the respondent, even though the name of Smt M.S.Tirumala Rani is printed in the cause list.

2. Petitioner is a Decree Holder in O.S.No.776 of 2004 on the file of the II Additional Junior Civil Judge, Vijayawada. He obtained the decree for recovery of money against the respondent.

3. Petitioner filed E.P.No.134 of 2009 seeking arrest and detention of the respondent in civil prison on the ground that the respondent neglected and failed to satisfy the decree in spite of demands. Petitioner stated specifically in the E.P. that the respondent had filed I.P.No.15 of 2006 before the II Additional Senior Civil Judge, Vijayawada under the Provincial Insolvency Act, 1920, that the said I.P. was dismissed on 13.02.2009, and therefore the respondent should be put in civil prison to satisfy the decree, since he had the means to satisfy the decree.

4. Respondent filed a counter stating that he was a pauper and he had no movable or immovable properties in his name. He stated that though I.P.No.15 of 2006 was dismissed, an

appeal A.S.No.97 of 2009 was pending against the judgment in IP.No.15 of 2006.

5. By order dt.13.11.2009, the Court below dismissed the E.P. stating that the petitioner failed to show that the respondent had any means to satisfy the decree. It also took note of the fact that there was an appeal pending against the order dismissing the I.P.

6. Challenging the same, this Revision is filed by the petitioner.

7. Counsel for the petitioner has placed before me order in A.S.No.97 of 2009 dt.24.11.2012 of the XIII Additional District Judge, Krishna at Vijayawada confirming the order dt.13.02.2009 in I.P.No.15 of 2006 and giving a clear finding that the respondent had properties and income to discharge the debts and to avoid repayment of debts to the petitioner, he had filed the I.P.

8. Counsel for the petitioner states that this order in A.S.No.97 of 2009 has not been appealed against by the respondent and it had attained finality.

9. In this view of the matter, I am of the opinion that the respondent cannot continue to contend that he has no assets to satisfy the decree obtained by the petitioner *prima facie*.

10. Therefore, this Civil Revision Petition is allowed; the order dt.13.11.2009 in E.P.No.134 of 2009 in O.S.No.776 of 2004 of the II Additional Junior Civil Judge, Vijayawada is set aside; and the said Court is directed to re-examine the issue. Petitioner is given liberty to place before the II Additional Junior civil Judge, Vijayawada the certified copy of the judgment and decree in A.S.No.97 of 2009 of the XIII Additional District Judge, Krishna at Vijayawada and the same shall be considered by the said Court after issuing notice to the respondent and it shall then dispose of the said E.P. within a period of four (04) months from the date of receipt of a copy of this order. There shall be no order as to costs.

11. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

17th February, 2017

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