

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.4977 of 2016

ORDER:

- 1) Assailing the order, dated 28.09.2016 passed in E.P.No.1 of 2015 in O.S.No.47 of 2009 on the file of the Junior Civil Judge, Sathyavedu, wherein the execution petition filed by the decree holders seeking detention of the judgment debtors into civil prison and attach their properties for violating the judgment and decree dated 18.11.2014 passed in O.S.No.47 of 2009, was partly allowed, the present Civil Revision Petition came to be filed.
- 2) The petitioners herein are the judgment debtors and respondents herein are the decree holders before the trial Court. For the sake of convenience, the parties will hereinafter referred to as arrayed before the trial Court.
- 3) The decree holders filed O.S.No.47 of 2009 against the judgment debtors for permanent injunction restraining them, their men, agents, servants or any other persons claiming through them from interfering with their possession and enjoyment over the schedule property. The said suit was decreed on 18.11.2014, granting injunction. Though the judgment debtors are well aware about the decree and judgment, they have been creating troubles to the decree holders since January, 2015. On 11.02.2015 at about 8.00 a.m., the judgment debtors, family members and their servants criminally trespassed into the schedule property and kept

two hay stock heaps high handedly thereby flouting the orders of the permanent injunction. On coming to know about the incident, the decree holders went to the schedule property, and questioned the judgment debtors about their high handed activities but they did not hear them. On the other hand, they are alleged to have abused them in vulgar language, pushed and threatened them with dire consequences. After the said incident, the decree holders rushed to Varadaiahpalem police station and presented a police report on 11.02.2015. But the police failed to take any action against the judgment debtors. Hence, the decree holders filed the present execution petition.

4) A counter came to be filed against the judgment debtors denying placing of hayrick in the schedule property, thereby flouting the decree of the court. It is further stated that the above petition is filed only to harass the judgment debtors.

5) After considering the material available on record, the trial Court allowed the petition partly and the respondents 1 to 8 therein were ordered to be detained in civil prison for a period of 15 days and also directed to issue warrant on payment of process. Challenging the same, the present Civil Revision Petition came to be filed.

6) Learned counsel for the petitioners mainly submits that the order detaining the petitioners came to be passed without appreciating the evidence available on record properly. It is said that though a report is said have been lodged but no crime is

registered on the said report. Relying upon the judgment of this Court in *Koya Ranga Reddy and others v. Koya Narayana Reddy and others*¹, (2) *Malle Ranga Reddy and another v. Thirunagaru Purushotham*² and (3) *Kunkuntla Narsimha v. Syed Zainulabuddin*³ learned counsel for the petitioner would submit that the order under challenge warrants interference. The same is disputed by the learned counsel for the respondents contending that the evidence of PWs.1 to 3, read together, clearly discloses the role of each of the petitioner in violating the injunction granted by the trial Court.

7) The material on record discloses that petitioners 7 and 8 were not parties to the suit but however that by itself cannot be a ground to exonerate them for the reason that injunction was not only against the defendants therein but also against their men, agents and other persons claiming through them.

8) In order to appreciate the rival submissions, it would be useful to refer to the evidence of PWs.1 to 3. PW.1 in his evidence deposed about filing of the suit against the defendants seeking injunction and granting of injunction order. It has been specifically stated that though the judgment debtors and others are well aware of the decree and judgment of the Court they have been creating troubles by not allowing the decree holders to enjoy the property. It is also stated that on 11.02.2015 at about 8.00 a.m. the judgment debtors, their family members and their

¹ (2007) 3 ALD 4

² (2014) 6 ALD 457

³ (2015) 3 ALD 700

servants wantonly and wilfully disobeyed the judgment of the trial Court, trespassed into the said land and kept two hayricks in the land of the decree holders. When PW.1 questioned the un-just acts by showing the court orders, the judgment debtors and their family members ie. Lakshmi (7th petitioner herein) and Latha (8th petitioner herein) did not hear her objections. It is further stated that these two persons abused her and her father in filthy language, pushed her down and threatened PW.1 stating that if she ever come to the schedule land, they would kill her. Then father of PW.1 and one Girija rescued her from the hands of judgment debtors.

9) In the cross examination, PW.1 admits that coolies, who are residents of Chedalapakam village laid hayrick in the E.P. schedule property. PW.1 categorically admits that coolies from Chedalapakam village have attended the works in the village and they also attended their work. When she intimated the coolies about the decree passed in her favour, they went away. She also admits that she knows those coolies but however failed to mention their names. PW.1 in her cross examination further admits that E.P. schedule property is at a distance of one furlong from her house. On coming to know about the same she alone went to the E.P. schedule property and questioned the judgment debtors. Later her father and Girija came there. It is further admitted that 10 to 15 residential houses are situated adjacent to the E.P. schedule property and the persons residing therein have witnessed the incident.

10) Coming to the evidence of PW.2, she deposed about the incident that took place on 11.02.2015 at about 8.00 a.m. when the judgment debtors, their family members and servants wantonly disobeyed the decree and judgment of the Court. It is stated that PW.1, by name Jayanthi, on coming to know about the same, rushed to the E.P. schedule property along with PW.2 and her father and questioned about their high handed act. She claims to have witnessed the incident wherein judgment debtors pushed and abused PW.1. In the cross examination, PW.2 states that the incident took place in the year 2014 and that she cannot tell the date and month. She further admits that she does not know the name of the sole worker, who attended the work on the date of incident, but stated that he is resident of Bathalavallam Village and that only one worker attended. It is said that in spite of their request, the worker, who attended the work, placed the hayrick in the E.P. schedule property.

11) If the evidence of PWs.1 and 2 are taken into consideration, it is to be noted that their evidence is not consistent with each other. In the chief examination PW.2 states that the incident took place on 11.02.2015 but in the cross examination she has stated that the incident took place in the year 2014 and she cannot tell the date and month. Though PW.1 in her evidence states that initially she alone went to E.P. schedule property, which is at a distance of one furlong, and thereafter her father and PW.2 came there, but the evidence of PW.2 is otherwise. It is

her version that on the date of incident, all three of them went to the E.P. schedule property together, where the judgment debtors are alleged to have assaulted PW.1. The evidence of PW.1 is silent as to whether PWs.2 and 3 witnessed the incident of she being assaulted and abused. Apart from the above, the admission made by PW.1 in her evidence shows that the workers, who are the residents of Chedalapakam village laid hayrick in the E.P. schedule property, where as PW.2 admits that there was only one worker and he was from Bathalavallam village. Since the alleged trespass and violating the injunction order was also done by the coolies, no reasons are forthcoming as to why they are not made parties. In fact, it is they who are alleged to have violated the order.

12) In *Koya Ranga Reddy case (1 supra)* a learned Single Judge of this Court while dealing with the issue of detention of judgment debtor's in civil prison held as under:

“From a perusal of Order XXI and Rule 32 (1), it is evident that mere existence of a decree for perpetual injunction, or for that matter, a mere complaint, by the decree-holder against the judgment-debtor, is not sufficient to direct the detention of the judgment-debtor in civil prison. Two facts are necessary to be proved by the decree-holder : In a way, they are two facets of the same phenomenon. The first is that the judgment-debtor must have an opportunity to obey the decree, and the second is that despite such an opportunity, he had wilfully failed to obey it. To state in different terms, mere failure of a judgment-debtor to obey the decree, when he did not have an opportunity to do so; cannot constitute a ground

to order his detention in civil prison. Similarly, if the failure is not wilful, the Executing Court cannot direct his detention, notwithstanding that the judgment-debtor had an opportunity to obey the decree. Both the facts must be proved. By their very nature, they need to be established through sufficient evidence, to the satisfaction of the Court. The fact that the judgment-debtor remained, or was set ex parte, does not relieve the decree-holder, of his obligation and burden, to prove the ingredients of Rule 32.”

13) In *Malle Ranga Reddy and another v. Thirunagaru Purushotham (2 supra)* a learned Single Judge of this Court, relying on a judgment in *Koya Ranga Reddy (1 supra)*, held that unless the decree holder, by cogent and convincing evidence, proves the existence of the ingredients of Rule 32 Order XXI of C.P.C., the order of arrest cannot be made.

14) In view of the discrepancy in the evidence of PWs.1 and 2 a doubt would arise as to whether really there was any alleged trespass. Infact, the trial Court did not even discuss the evidence in detail to come to a conclusion that there was any violation of permanent injunction.

15) In view of the judgments referred to above and in view of the discrepancy in the evidence of PWs.1 and 2, the impugned order dated 28.09.2016 passed in E.P.No.1 of 2015 in O.S.No.47 of 2009 on the file of the Junior Civil Judge, Sathyavedu, is *set aside* and the Civil Revision Petition is allowed.

16) Miscellaneous petitions, pending, if any, shall stand closed.

There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

23.02.2017

gkv

