

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.349 of 2014

ORDER :

This revision is filed, under Section 115 of C.P.C., by the petitioners-Decree Holders, challenging the order, dated 22.11.2013, passed by the Judge, Family Court, Hyderabad, in E.P.No.32 of 2012 in O.S.No.108 of 2003, whereby the execution petition filed by the petitioners for recovery of arrears of maintenance of Rs.4,24,000/- and order for arrest of the Judgment Debtor was dismissed.

2. The Executing Court issued notice under Order XXI Rule 37 C.P.C. On appearance, the Judgment Debtor filed counter stating that he has no means to pay the decretal amount.

3. When the Execution Petition filed for realization of the decree debt by arrest of the Judgment Debtor, issuing a notice under Order XXI Rule 37 C.P.C., it is the duty of the Court to make an enquiry as to means of judgment-debtor to discharge the debt. When a judgment-debtor appears before the Court in obedience to a notice issued under Rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. Therefore, an enquiry is contemplated under Order XXI Rule 40 C.P.C. to prove

that the judgment-debtor possessed sufficient means and that he is willfully evading to pay the decree debt.

4. But, in the present case, no such enquiry was conducted by the Executing Court. Further, the Executing Court concluded that the petitioner failed to establish the requirements to realize the decree debt by arrest of the judgment-debtor under Section 55 or under Order XXI Rules 37 and 38 of C.P.C. Therefore, the order of the Executing Court is erroneous on the face of record for violation of Order XXI Rule 40 C.P.C., thereby the order is set aside, directing the Executing Court to conduct enquiry as contemplated under Order XXI Rule 40 C.P.C. and pass appropriate orders.

5. With the above direction, the revision is allowed remanding the matter to the Executing Court for conducting enquiry under Order XXI Rule 40 C.P.C. and pass appropriate orders.

6. As a sequel, miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

13th June 2017

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