

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5105 OF 2011

ORDER:

This Civil Revision Petition is filed under Section 115 of C.P.C. challenging the orders dated 19.09.2011 passed in E.P.No.67 of 2010 in O.S.No.374 of 1998 on the file of the Court of the Principal Junior Civil Judge, Tiruvuru.

2. The contention of the learned counsel for the petitioner is three fold: (1) the executing Court failed to consider that the respondent has not denied his financial capacity and dismissed the petition on erroneous grounds; (2) the executing Court ought not to have placed reliance on Ex.B.1; and (3) the order passed by the executing Court is not sustainable either on facts or in law.

3. The petitioner is the decree holder and the respondent is the judgment debtor in E.P.No.67 of 2010 in O.S.No.374 of 1998.

4. A perusal of the record reveals that the petitioner herein filed O.S.No.374 of 1998 on the file of the Principal Junior Civil Judge, Tiruvuru against the respondent for recovery of money. The trial Court after affording a reasonable opportunity to both parties, decreed the suit on 27.06.2001. For one reason or other, the respondent did not pay the decretal amount to the petitioner. The petitioner having no other alternative filed a petition under Order XXI Rules 37 and 38 of C.P.C. for realization of decretal amount by detaining the respondent in prison.

5. During the course of enquiry, the petitioner himself was examined as PW.1 and no documents were marked. To dislodge

the case of the petitioner, the respondent himself was examined as RW.1 and got marked Ex.B.1. To prove the recitals of Ex.B.1, the respondent examined RWs.2 and 3, who are the attestors of Ex.B.1.

6. Basing on the oral, documentary evidence and other material available on record, the executing Court dismissed the petition. Hence, the revision.

7. It is the case of the petitioner that the respondent intentionally and willfully evading to pay the decretal amount even though he is having sufficient means. It is the further case of the petitioner that the respondent is having an extent of Ac.13.00 cents of land in R.S.No.23/1B and R.S.No.23/2 of Yerokopadu Village of Tiruvuru Mandal. It is the case of the respondent that he paid the entire amount to the petitioner under Ex.B.1. As per the testimonies of RWs.2 and 3, the respondent paid the decretal amount to the petitioner under Ex.B.1 – receipt.

8. The executing Court has not placed reliance on Ex.B.1-receipt. In view of Order XXI Rule 2(2) of C.P.C., the executing Court rightly discarded Ex.B.1-receipt.

9. It is needless to say that the burden of proof lies on the petitioner to establish that the respondent is having an extent of Ac.13.00 cents of land. Except the self-served testimony of PW.1, there is no other cogent and convincing evidence to establish that the respondent is having an extent of Ac.13.00 cents of land. If really the respondent is having an extent of Ac.6.80 cents of land in R.S.No.23/1B and an extent of Ac.6.80 cents of land in

R.S.No.23/2 of Yerokopadu Village, what prevented him to obtain necessary records from the Revenue Department? It is not uncommon to exaggerate the things by the parties to the proceedings. For one reason or other, the petitioner did not produce the documentary evidence to establish that the respondent is having an extent of Ac.13.00 cents of land. Even assuming, but not conceding, that the petitioner could not get revenue record for the reasons beyond his control, what prevented him to examine the neighbouring owners of the respondent? For the reasons best known, the petitioner did not choose to examine any witness. As per Section 101 of the Indian Evidence Act, the burden of proof lies on the person, who asserts a particular fact. The petitioner failed to prove that the respondent is having sufficient means to pay the decretal amount and intentionally and willfully evading to pay the same. A perusal of the record reveals that the petitioner herein filed similar type of petition on a previous occasion and the same was dismissed. Absolutely there is no material on record to establish that the respondent is having sufficient means to pay the decretal amount. The executing Court considered factual and legal aspects in right perspective and arrived at a conclusion that the respondent has not means to pay the decretal amount. The executing Court has assigned reasons much less cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the executing Court. There is no illegality or irregularity in the orders of the executing Court, which warrants interference of this Court. Hence, there are no merits and *bona fides* in this revision.

10. Accordingly, the Civil Revision Petition is dismissed.

No costs.

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

T.SUNIL CHOWDARY, J

Date: 18.01.2017

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