

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

Civil Revision Petition No.1447 of 2012

ORDER:

This Civil Revision Petition is filed against the orders dated 24th November, 2011 in E.P.No.45 of 2010 in O.S.No.466 of 2008 on the file of the Principal Junior Civil Judge, Machilipatnam.

2. The E.P. was filed for arrest and detention of judgment debtor in execution of a money decree obtained against him. As the decree holder sought the arrest of judgment debtor, he had to prove that the judgment debtor has sufficient means to pay the decretal debt and for that purpose, he has examined himself as a witness and marked Exs.A.1 to A.3. Respondent has examined himself as RW.1 and also examined RW.2 and got marked two sale deeds-Exs.B.1 and B.2.

3. A perusal of the evidence reveals that Ex.A.1 is the Certificate of a Cooperative Society. Ex.A.2 is Encumbrance Certificate. Ex.A.3 is a certificate issued by the Municipality of Machilipatnam to the judgment debtor. The decree holder contends that these documents establish the capacity of the judgment debtor to pay and that he is also possessed of land.

4. The contention of the judgment debtor is that he has no means to pay the decretal debt and that the lands purportedly owned by him are already sold in 1998 itself

which is longer prior to the filing of the suit. The two sale deeds under which the judgment debtor sold his lands are marked as Ex.B.1 & B.2.

5. From the foregoing, it is to be assessed whether the judgment debtor is possessed of sufficient means in assets to pay the decretal debt and he has avoided to pay the decretal debt.

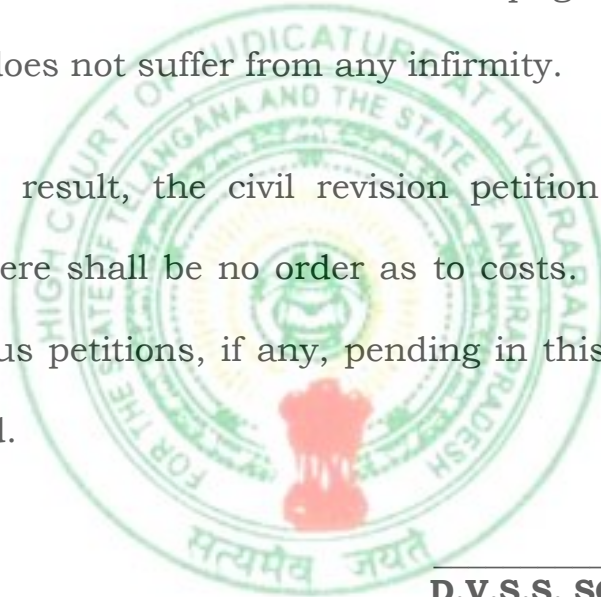
6. Exs.A.1 to A.3 do not conclusively established that the judgment debtor has sufficient means to pay the decretal debt and that he is avoiding to pay the debt. Ex.A.3 is certificate issued by the Municipality. The said document cannot be considered to be a “document of title”. If the decree holder had information that a particular house mentioned in Ex.A.3 belongs to the judgment debtor, he should have filed the title deed of the property or at least a certified copy of the same to prove as the property belongs to the judgment debtor.

7. The trial Court has rightly considered all the aspects and came to the conclusion that the decree holder did not discharge the burden through the oral or documentary evidence to show that the judgment debtor had means to pay. Possession of some assets by itself is not enough to order “arrest”, unless it is shown that despite possession of the income generating asset, the judgment debtor deliberately “refuses” to pay the decretal debt. Unless this proof is

discharged, no order can be passed. As held in ***Jolly George Varghese v. the Bank of Cochin***¹ there must be deliberate and dishonest disowning of liability before arrest is ordered.

8. In the present case, the trial Court rightly came to the conclusion that the decree holder did not discharge the burden cast upon him to prove that the judgment debtor had means to pay the decretal debt and that he deliberately avoided the debt. Therefore, I am of the opinion that there are no merits in the revision and that the impugned order of the trial Court does not suffer from any infirmity.

9. In the result, the civil revision petition is dismissed. However, there shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.



D.V.S.S. SOMAYAJULU, J

Date: 06.10.2017
Dvs/Isn

¹ (1980) 2 SCC 360