

HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1879 of 2012

ORDER:

This Revision petition is filed under Section 115 of C.P.C. challenging the order in E.P.No.143 of 2006 in O.S.No.111 of 2006 on the file of Junior Civil Judge, Allagadda, dated 07-05-2010 whereby, the arrest of the petitioner herein/Judgment debtor was ordered for realization of decretal amount and ordered issue of warrant of arrest against him on payment of process. The parties herein, will hereinafter will be referred as judgment debtor and decree-holder for convenience of reference.

The decree-holder filed O.S.No.111 of 2006 and obtained decree. As the judgment-debtor failed to discharge the debt, the Decree-holder filed E.P.No. 143 of 2006 for realization of the amount by arrest of Judgment-debtor alleging that the petitioner possessed sufficient means to discharge the debt, but he is intentionally avoided to discharge the debt.

On appearance, the Judgment-debtor filed counter mainly contending that he had no means and he did not possess movable or immovable property and that the Execution Petition is filed to harass him. It is also further contended that he is aged 65 years suffering from Hypertension and old age ailments like heart attack etc., and that he is undergoing treatment. Therefore, he is not in a position to discharge the debt and prayed for dismissal of E.P.

During enquiry, the Decree-holder was examined as PW.1 and marked Ex.P.1, on behalf of the Judgment-debtor, he himself is examined as RW.1 and marked Exs R1 to R3.

Upon hearing arguments of both the counsel and considering the material available on record, the Executing Court concluded that the

petitioner herein possessed sufficient means to discharge the debt and willfully avoided discharge of the decretal debt and directed to issue warrant of arrest on payment of arrest.

Aggrieved by the order passed by the Executing Court in EP.NO.143 of 2006 in O.S.No.111 of 2006, dated 07-05-2010, the present revision is filed under Section 115 C.P.C. mainly contending that the Executing Court did not consider the main requirements to order arrest of Judgment debtor for realization of the amount, viz; means to pay debt due under decree, refusal and negligence on the part of Judgment-debtor in discharging the debt. The Executing Court without recording the finding as to the means, refusal or negligence on the part of petitioner herein ordered his arrest erroneously and prayed to set aside the same.

Notice before admission was ordered and notice was served on the respondent herein/ Decree-holder. Proof of service i.e. acknowledgment is filed before this Court on 10-03-2012 along with memo, but none appeared.

During hearing, learned counsel for the petitioner Sri Karri Murali Krishna at the stage of admission would contend that the Executing Court did not record a finding as to the possession of sufficient means by the petitioner herein to discharge the debt due under decree, to the respondent herein/ Decree-holder, so also refusal or negligence on his part to discharge the debt. In the absence of such findings, the order cannot be sustained.

Undisputedly, the decree was obtained for recovery of money by the Decree-holder against the petitioner herein/ Judgment-debtor and the decree remained unsatisfied. To realize the decree debt, the respondent/ Decree-holder initiated execution proceedings for recovery

of amount by way of arrest of Judgment-debtor under Order XXI Rules 37 and 38 of C.P.C. The Judgment-debtor filed counter contended that he has no means to pay the debt and that he is suffering from old age ailments, underwent treatment for heart ailment and that there is no negligence or refusal on his part to discharge the debt due and prayed for dismissal of the execution petition. During enquiry, on behalf of the respondent herein/ Decree-holder, the respondent herself examined as PW.1 and marked Ex.P.1 to prove that the Judgment-debtor possessed sufficient means and avoided to discharge the debt willfully and thereby there is refusal and negligence to discharge the debt, as the Judgment-debtor failed to discharge the burden of proof which shifted on him after adducing the evidence of the Decree-holder. The said findings are under challenge on various grounds referred to supra.

Section 55 of C.P.C. deals with arrest and detention and notice under Rule 37 and enquiry is contemplated under Rule 40 of Order XXI of C.P.C. Here, enquiry contemplated under Rule 40 of Order XXI of C.P.C was conducted and PW.1, while testifying that the Judgment-debtor own agricultural land and cultivating the same, thereby possessed sufficient means to pay the decretal debt but did avoid to discharge the decree debt and to substantiate her contention, she produced documentary evidence, marked as Ex.P.1 i.e. adangal to show that the petitioner herein possessed sufficient means to discharge the debt due under decree. The petitioner though testified about his inability to discharge the debt as he possessed no means, but he did not produce even scrap of paper to substantiate that he is not owner or possessor of land shown in Ex.P.1. issued by Village Revenue Officer, Yellavathula village. If Ex.P.1 is accepted i.e. Adangal the petitioner herein is owner and possessor of

land cultivating the property and getting income therefrom. When once the Decree-holder produced satisfactory evidence that the Judgment-debtor own and possessed property and getting sufficient income to discharge the decree debt, the burden will shift on to the Judgment-debtor to rebut the evidence of Decree-holder but he did not produce any documentary proof, even not examined the Village Revenue Officer or any other person to prove the entries contained in Ex.P.1 are false and that he did not possess any property or means to discharge the debt due except bare denial in his evidence. Thus, the Executing Court while believing Ex.P.1 and disbelieving contention that the Judgment-debtor did not possess means to discharge the debt, came to conclusion rightly that the Judgment-debtor possessed sufficient means to discharge the debt due to the decree-holder. This finding does not call for interference of this Court, as the said finding is free from any legal or factual infirmity warranting interference of this Court by exercising power under Section 115 of C.P.C.

The other ground urged before the Executing Court was that the petitioner herein is suffering from old age ailments like heart attack etc., but the trial Court did not accept his contention assigning its own reasons. The judgment-debtor before the Executing Court though produced Ex.R.1 investigation report, dated 28-02-2008 issued by Dr.Branma Reddy and Exs R.2 and R.3 pathological reports issued by same Doctor in Partha Sardhi Lab, at best would show that the petitioner is suffering from certain deficiencies. The judgment-debtor is aged 55 years as per long cause title in Execution Petition. He denied his age mentioned in E.P. while contending that he was aged 65 years. But no proof is filed in support of his age. When the judgment debtor claiming

exemption from arrest, it is for him to establish that he was suffering from serious ill-health.

According to Section 55 of C.P.C. a Judgment debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained.

Section 56 of C.P.C. deals with prohibition of arrest or detention of women in execution of decree for money in execution decree for money and it is irrelevant. According to Section 59 of C.P.C. at any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness, where a judgment-debtor has been arrested, the Court may release him, if, in its opinion, he is not in a fit state of health to be detained in the civil prison and where a judgment-debtor has been committed to the civil prison, he may be released therefrom by the State Government on the ground of existence of any infectious or contagious disease or by the committing Court or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness. The Judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58. In view of Section 59 C.P.C., if any warrant is issued and subsequently, the Judgment-debtor is suffering from any infectious or contagious disease, he can be released. Here, the petitioner herein/ Judgment-debtor in the Execution Petition though produced

pathological reports, those complaints are not of serious nature, which would entitle him to be released by exercising power under Section 59 of C.P.C. The release of Judgment-debtor by exercising power under Section 59 of C.P.C. would arise only after issuing warrant of arrest not before issuing warrant of arrest or warrants in execution of decree. Therefore, when the Court considered evidence before issuing warrant of arrest for realization of the decretal amount after conducting enquiry under rule 39 of Order XXI of C.P.C. the petitioner herein is liable to be arrested for realization of the decretal amount, as he is intentionally refused to satisfy the decree debt, though the decree was passed four years prior to ordering arrest of the petitioner herein. In such circumstances, the order passed by the Executing Court in E.P.No.143 of 2006 in O.S.No.111 of 2006 cannot be faulted, since I find no legal infirmity.

This Court can exercise its jurisdiction under Section 115 of C.P.C. but power of this Court under Section 115 of C.P.C. is limited and such power can be exercised only when the Subordinate Court exercised a jurisdiction not vested in it by law or failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity. But here is not the case of such exercise of powers as pointed in the entire grounds of revision to exercise power under Section 115 of C.P.C. and to interfere with the order passed by the Executing Court.

As discussed above the jurisdiction of this Court under Section 115 of C.P.C. is limited and unless, the petitioner establishes any one of the three requirements contemplated under Section 115 of C.P.C. this Court cannot interfere with the findings recorded by the Executing Court. On overall consideration of the entire material on record, I find no illegality

in the order passed by the Executing Court in E.P.No.143 of 2006 in O.S.No.111 of 2006 warranting interference by this Court. Hence, the order of the Executing Court is hereby confirmed and consequently, the petition is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed, but without costs in the circumstances. In consequence, Miscellaneous Petitions, if any, pending in this revision petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

13-06-2017
Nvl

