

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION NO.2920 OF 2012

ORDER:

This revision petition, filed under Section 115 of the Code of Civil Procedure, 1908 (for short "CPC") by the judgment holder-defendant in O.S.No.308 of 2006 on the file of the court of Principal Junior Civil Judge, Tiruvuru, challenges the order passed in E.P.No.147 of 2011 in O.S.No.308 of 2006.

2. Heard Sri Sreenivasa Rao Velivela, counsel for the petitioner and Sri Kowturu Vinaya Kumar for the respondents.

3. Seeking enforcement of the decree, the respondents herein filed E.P.No.147 of 2011 by way of arrest of the judgment debtor/petitioner herein under the provisions of Order XXI Rules 37 and 38 of CPC. The petitioner herein contested the said E.P by way of filing a counter. The learned Principal Junior Civil Judge, Tiruvuru by way of order, under challenge, allowed the said E.P and directed to issue arrest warrant.

4. According to the learned counsel for the petitioner, the order impugned is erroneous, contrary to law and was passed without considering the provisions of CPC. It is submitted by the learned counsel for the petitioner that the decree holder ought to have initiated the E.P. proceedings by other modes, namely, attachment of salary, attachment

of immovable property or both. It is further submitted that the remedy under Order XXI Rules 37 and 38 of CPC is a last remedy and on the said ground the Court below ought to have dismissed the application.

5. On the contrary, it is submitted by the learned counsel for the respondents that it is open for the decree holders to choose any one of the modes open under Order XXI Rule 30 of CPC and it is not for the judgment debtor to dictate the terms once the decree is passed.

6. In this context, it may be appropriate to refer to the provisions of Order XXI Rule 30, which reads as under:-

30. Decree for payment of money.---

Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

7. It is very much evident from a reading of the above provision of law that it is always open for the decree holder to execute the decree by way of detention in civil prison of the judgment debtor or by attachment of sale of property or both. In fact, the court below also negated the said contention advanced on behalf of the judgment debtor by relying upon the judgment of this court dated 24-02-2010

in CRP.No.3453 of 2006 (*P.Venkataramana vs. Vungatla Appa Rao*). Therefore, this court does not find any valid reason to meddle with the order impugned in the Civil Revision Petition. This court on 04-07-2012 granted interim stay of all further proceedings subject to the petitioner depositing 50% of the decretal amount before the execution court within six month. According to the learned counsel for the petitioner, the petitioner herein deposited the said amount and the decree holder had already withdrawn the said amount.

8. Having regard to the facts and circumstances and taking into consideration of the submissions of the learned counsel for the petitioner, this Civil Revision Petition is dismissed. However, time is granted to the judgment debtor/petitioner to pay the balance of the E.P amount within six(6) months from today. In the event of failure to pay the said amount within the said time, it is open for the decree holders/respondents to proceed in accordance with law. No order as to costs.

Miscellaneous Petitions pending, if any, in this CRP shall stand closed.

A.V.SESHA SAI, J

10.08.2017
TSNR