

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.3067 OF 2017

ORDER

This Civil Revision Petition is directed against the order dated 13.04.2017 passed in E.P.No.150 of 2015 in O.S.No.381 of 2012 by the I Additional Junior Civil Judge, Ongole, Prakasam District.

The petitioner herein is the judgment debtor and respondent is the decree holder.

The respondent-decree holder obtained a decree in the said suit on 10.10.2014 and filed the said EP seeking arrest of the judgment debtor. In the affidavit filed in support of the EP, it is stated as follows:

“The defendant having capacity to pay the decree amount, the JDR intentionally did not choose to pay decree amount to the DHR/petitioner. The JDR/respondent are doing business and he is getting of Rs.40,000/- per month but he did not comply the order of the Court. Thus the JDR/respondent are having capacity to clear off the decree amount. The defendant/JDR having good means to comply the decree, but did not choose to pay the decree amount. I have filed the EP for the arrest of the defendant/JDR.

The petitioner filed a counter stating that though at one point of time, he was doing business in selling bajjis and bondas on a cart, subsequently, he wound up the business in June, 2009 and thereafter, he started selling sweets on a cart by borrowing amount from several persons including the decree holder at exorbitant rate of interest. He is suffering from diabetes and mental disorder. Subsequently, his sweets business was wound up in 2012. He is an illiterate, landless poor and he has no source of income to pay the decretal amount.

Based on the said pleadings, the decree holder got himself examined as PW1 and the judgment debtor was examined as RW1. No documents were filed on behalf of the decree holder, but the judgment debtor filed Exs.R1 to R4. The trial Court passed the impugned order on 13.4.2012, relevant portion of which reads as under:

“On perusal of rival contentions asserted by both parties, admittedly decree was passed against J.Dr in O.S.No.381/2012. The same is not disputed by him. Thus the decree passed by Prl.Junior Civil Judge, Ongole holds good. The contention of J.Dr is that he has no capacity to pay E.P. amount as he is dependent on his wife who is house made servant at present. Whereas, the D.Hr submits that the J.Dr is having sufficient means to pay decretal amount as he

is running sweets karkana with four workers paying salaries to them. Though JDr denied the contention of D.Hr stating that at present he is not running those business and he is suffering from ill health from 2012. Coming to his cross examination he admitted that he is dependant on his wife who is house made servant. Moreover he also admitted that his elder daughter is already married and younger daughter is studying intermediate at Venus College i.e., in residential college. Though the J.Dr submitted in the above manner it cannot be believed that the income of wife of J.Dr. being house made servant would be sufficient for maintaining entire family as well as for education of his second daughter in residential college. Moreover, Exs.R1 to R3 are pertaining to the year 2012 and no document is placed before this Court pertaining to present health condition of J.Dr. However, if at all he has been suffering from mental illness still it cannot be expected that he would come to Court and give evidence in this manner. Hence, in such circumstances stated above, it can be said that D.Hr has proved that J.Dr is having sufficient means and failed to discharge the decretal dent. For the reasons stated above, the point is answered in favour of D.Hr.”

The said order does not disclose the means of the petitioner for paying the decretal amount.

In the absence of any conclusive finding with regard to the means of the J.Dr, the order of arrest should not have been passed in the instant case.

Therefore, the impugned order is set aside and the matter is remanded to the trial Court for passing fresh orders in accordance with law.

Accordingly, the Civil Revision Petition is allowed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

6th October, 2017
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