

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P. No. 3823 OF 2017

ORDER:

Heard Mr. K. Sitaram, counsel for the petitioner.

2. In spite of service of notice, none appears for respondent/Decree Holder(D.Hr).

3. The Revision petitioner is the Judgment Debtor(J.Dr) and the Revision is filed challenging the order of arrest dated 19.06.2017 in E.P.No.64 of 2016.

4. Mr.Sitaram though tried to convince this Court on a few irregularities present in the order of the Executing Court, this Court, after taking note of the following paragraphs, this Court is satisfied that the grounds are merely urged but could not be satisfactorily established for interference under Section 115 of C.P.C.

“In another hand, the J.Dr examined as R.W.1 in his chief affidavit he stated that, he does not own any properties either movable or immovable property of his own. He is not a merchant and not doing any business of any work. Further stated that he has no mean to pay the E.P. amount.

In cross-examination of R.W.1 he admitted that, his father used to do vegetable business since 30 to 40 years. J.Dr is residing at Hyderabad. But he has not mention in chief affidavit since four years he is residing at Hyderabad. Further in cross-examination he admitted that his family members there is a mortgage to the house bearing No.25/541.

In view of the said admission it clearly goes to show that, the father of J.Dr is having house bearing door No.25/541. Hence J.Dr is also having share in that house.

Further in cross-examination he stated that, the said house belongs to his mother and he has not filed any documents belonging to his mother. In view of the said fact, the J.Dr have stated in the first instance that, his family members are having house bearing door No.25/541 and second instance he stated that, the said house belongs to his mother.

To prove, the J.Dr have not filed any documents to show that the house stands in the name of her mother. However, admittedly the J.Dr contended that, his family members are residing in the house door No.25/541 and presently he is also residing in the house. Further he stated his father doing vegetable business since 30 to 40 years.

Having considering the contention of the petitioner and respondent it clearly goes to show that the J.Dr is having sufficient means to pay the E.P. amount, intentionally he is denying the facts and suppressing that, he is not having sufficient means to pay the E.P. amount and he is not movable and immovable properties in his name. further on his own admission the parents of J.Dr are having own house and in that house he is residing. Having considering the said facts the J.Dr having sufficient means to pay the E.P. debt amount.”

5. Be that as it may, on 11.08.2017 this Court has put the petitioner herein to the condition of depositing 1/3rd of the decretal amount and Mr.Sitaram submits that on 31.08.2017 the amount was deposited in E.P. He requests six (06) more

months' time to pay the balance 2/3rds and if arrest in the meantime carried out, the J.Dr will suffer irreparable loss and hardship.

6. After perusing the material on record being satisfied with the findings of Executing Court, its findings are confirmed. This Court having regard to the compliance of the condition imposed on 11.08.2017 extends execution of order of arrest by ten (10) weeks from today i.e., till 12.12.2017 subject to following conditions.

- (a) The petitioner deposits another 1/3rd and costs within five (05) weeks from today i.e., on or before 07.11.2017;
- (b) Likewise the balance 1/3rd is paid within further period of five (05) weeks thereafter i.e., on or before 12.12.2017;
- (c) The default in compliance of any one of the conditions, it is made clear that the Executing Court is given liberty to execute the warrant of arrest impugned in the Revision.

7. Civil Revision Petition disposed of as indicated above. No order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

S.V.BHATT, J

04th October, 2017.
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