

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION No.5430 of 2009

ORDER:

This Civil Revision Petition is arising out of the order dated 29.07.2009 in E.P.No.29 of 2009 in O.S.No.439 of 2007 on the file of the Court of Principal Junior Civil Judge, Yellamanchili (for short, trial Court).

2. The revision petitioner is the judgment debtor in O.S.No.439 of 2007 against whom E.P.No.29 of 2009 was filed under Order XXI Rule 37 read with Section 55 of CPC for his arrest for realisation of decretal amount. The trial Court, by order dated 29.07.2009, allowed EP.No.29 of 2009, directing the arrest of the revision petitioner. Challenging the same, the present revision is filed.

3. Ms.T.V. Sridevi, learned counsel appearing on behalf of the revision petitioner, submits that the revision petitioner died and no orders need be passed in the present revision petition.

4. The revision petitioner is the judgment debtor. He filed this revision challenging the order passed against him for his arrest. Since the revision petitioner died, action sought for his arrest becomes infructuous. The order passed by the trial Court becomes unexecutable in view of the death of the revision petitioner. Therefore, the warrant issued against the revision petitioner becomes infructuous. A personal action would not survive the death of the parties sued or suing. The maxim "*action personalis moritur cum persona*" has application in this case as it is a case of arrest of the judgment debtor was sought to execute the decree, as he is evading to pay the decretal amount. Since the petitioner died, no action

survives against a dead person, and therefore, this revision is liable to be dismissed.

5. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

Date: 27.04.2017
TJMR

