

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No. 5849 OF 2009

ORDER:

1. The petitioner/Judgment debtor aggrieved by the order dated 10.11.2009 passed in E.P.No.3 of 2008 in O.S.No.335 of 2005 by the learned II Additional Senior Civil Judge, Visakhapatnam preferred this revision petition on the ground that the default in paying the decretal debt is not deliberate and willful; that the Executing Court erred in ordering arrest despite the decree holder could not show any property of the petitioner/judgment debtor nor could he show other source of income and that the Executing Court also failed to see that the judgment debtor is an employee in the T.B.Hospital as a Junior Assistant and in case he is arrested, he will loose the job which will not serve any purpose.

2. The respondent/Decree holder contends that the revision petitioner/judgment debtor having immovable and movable property besides earning Rs.15,000/-per month as Junior Assistant failed to satisfy the decree and hence the order for arrest of the revision petitioner/judgment debtor is legal and valid.

3. Now the point that arise for consideration is, whether the order of the Executing Court is legal, valid and tenable ?

4. The main contention of the revision petitioner is that he is an employee in T.B,.Hospital and in case he is arrested, he will loose job which will not solve the problem, and further that he is not having movable or immovable properties or other source of income to satisfy the decree.

5. The undisputed facts are that the respondent/Decree holder filed O.S.No.335 of 2005 and the revision petitioner/Judgment debtor suffered decree dated 11.06.2007 for an amount of Rs.6,15,400/-. It is a fact that the revision petitioner/Judgment debtor is working as Junior Assistant in the TB Hospital and is earning as an employee.

6. In E.P.No.3 of 2008, the respondent/Decree holder himself was examined as P.W.1 and the revision petitioner/judgment debtor was examined as R.W.1. The clinching evidence of P.W.1/decree holder is that the R.W.1/Judgment Debtor is working as Junior Assistant in T.B. Hospital and earning Rs.15,000/-, which is not disputed by the R.W.1/Judgment debtor. Further the consistent evidence of P.W.1 is that after decreeing the suit, he approached the R.W.1, but he did not pay decreetal amount. On the other hand, R.W.1 in his evidence deposed that he has no sufficient means to discharge the decree debt, but, as he is an employee, instead of seeking his arrest, P.W.1 should have choosen for attachment of his salary.

7. The evidence on record clearly shows that the revision petitioner/Judgment debtor is an employee having sufficient earnings. Despite the request made by the respondent/decree holder, the revision petitioner/judgment debtor did not make attempt to pay the decree amount. Pertinent to observe, the revision petitioner, who is the judgment debtor has no right to say, in what manner the Decree holder can recover the decreetal amount. It is the choice of the Decree holder to choose any mode seeking either attachment of salary or attachment of movable or immovable properties of the judgment debtor or file a petition for arrest for realizing the decree amount. Therefore, it is not open to the revision petitioner to suggest the decree holder to choose a particular mode which is convenient to him. It is submitted that in spite of decree dated 11.06.2007 passed in O.S.No.335 of 2005 the decree holder could not recover the decree amount.

8. In the fact and circumstances discussed herein above, I find that the order of the Executing Court for arrest of the revision petitioner/judgment debtor finding that the judgment debtor despite having sufficient means willfully, wantonly and deliberately is avoiding to pay decree amount, is legal, valid and does not suffer from any legal infirmities warranting interference.

8. In the result, the Civil Revision Petition is dismissed confirming the order dated 10.11.2009 passed in E.P.No.3 of 2008

in O.S.No.335 of 2005 by the learned II Additional Senior Civil Judge, Visakhapatnam, with costs.

9. Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 11th DECEMBER, 2017.
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