

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.1543 OF 2010

ORDER

The petitioner is the judgment-debtor. The respondent herein is the decree holder. He filed E.P.No.109/2006 in O.S.No.190/2005 on the file of Principal Junior Civil Judge, Nuzvid, under Order 21, Rules 37 and 38 of C.P.C., seeking to send the judgment to the civil prison for non-satisfaction of the money decree passed in his favour. The trial court by the impugned order and decree dated 5.2.2010 allowed the execution petition. Aggrieved by the same, the present revision is filed.

This court while ordering notice before admission on 16.4.2010 granted interim stay of the impugned order until further orders.

The learned counsel for the petitioner submits that for seeking arrest of the judgment-debtor under Order 21 Rule 37 of CPC, the burden is on the decree-holder to prove that judgment-debtor having sufficient means, is avoiding to satisfy the decree. He submit that the decree-holder pleaded that the judgment-debtor is having land in an extent of Acs.3.25 cents with mango garden in R.S.No.1/1A 1 of Narsaupeta village and that he is getting as amount of rupees one lakh from the said land and that he is also doing mango business on commission basis and that he is also having share in the

family properties. But the decree-holder failed to substantiate his contention. He submits that the petitioner – judgment-debtor has specifically stated that he has sold away that property about three or four years. The decree holder in his cross-examination pleaded ignorance about this fact and failed to file any document to show that the said property is standing in the name of the judgment-debtor. As the decree-holder failed to discharge his burden to prove that the decree-holder is having sufficient means to satisfy the decree, the trial court is not justified in passed the impugned order for sending the judgment-debtor to civil prison.

Though notice is served upon the respondent, there is no representation on his behalf. Hence, this court is inclined to dispose of the revision on merits.

From the above, the claim of the petitioner is that he has no sufficient means to satisfy the decree and that the landed property purchased by him in an extent of Acs3.25 cents in Rs.1/1A1 of Narsupeta village has been disposed of about four or fives year back. To this fact, the respondent – decree holder in his cross-examination, pleaded ignorance. In the cross-examination of the petitioner as R.W.1, he deposed that he sold away the said property. The trial court, in my considered view, has not properly appreciated these facts. In view of the same, the impugned order is set aside

and the matter is remitted back to the trial court to dispose of the
E.P.No.109/2006 in O.S.No.190 of 2005 afresh in accordance with law.

The revision is disposed of accordingly. No costs.

Miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

DATE:10—08—2017
AVS

