

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4366 of 2010

ORDER :

This revision is filed by the petitioner/J.Dr./defendant, aggrieved by the order dated 13.08.2010 in E.P.No.15 of 2009 in O.S.No.525 of 2008 passed by the I Additional Senior Civil Judge, Vijayawada.

2. Heard both sides and perused the grounds urged in the revision, impugned order and the interim stay order of this Court dated 01.10.2010.

3. The said suit is filed for recovery of the amount covered by the decree in O.S.No.525 of 2008 dated 25.11.2008 for Rs.1,37,922/- with subsequent interest and costs. As one of the modes of execution of the decree, Decree Holder (for short 'D.Hr.') sought for arrest of the Judgment Debtor (for short 'J.Dr.') in E.P.No.15 of 2009 before the I Additional Senior Civil Judge, Vijayawada and after enquiry from the evidence of PW.1-D.Hr. and RW.1-J.Dr., with reference to Ex.B1-certified copy of registered document No.3382/ 1961 dated 30.08.1961, the lower Court, by order dated 13.08.2010 ordered for arrest of the J.Dr. for recovery of the amount holding that he is willfully avoiding to pay the decree debt despite means. It is the same impugned herein.

4. The contentions in the grounds of revision vis-à-vis oral submission of the learned counsel for the petitioner that the impugned order is illegal, unsustainable and contrary to law; that the learned Judge should have seen that the J.Dr./petitioner is working in V.T.P.S., Ibrahimpatnam and getting salary of Rs.15,000/- only and if at all the D.Hr. has to proceed to take steps for attachment of the salary instead of seeking arrest; and that the property covered by Ex.B1 is a patta land that was purchased by their grandfather in 1961 and after death of his father, he and his two brothers partitioned the property and thereby the order is not sustainable.

5. This Court, while granting stay did not observe anything, but for saying while ordering notice before admission of interim stay subject to deposit of Rs.25,000/- within six weeks there from and in default automatically the stay ceases its force.

6. The learned counsel for the revision petitioner/J.Dr. reiterated the above contentions.

7. Whereas, it is the submission of the learned counsel for the respondent/ D.Hr. that the order is sustainable and the revision is not maintainable and is liable to be dismissed for nothing to sit against the reasoned order.

8. Undisputedly, the J.Dr. was even from his own saying getting more than Rs.15,000/- p.m., as regular employee of V.T.P.S, Ibrahimpatnam and he did not choose even to pay a

single pie out of the decree debt. The petitioner claims that Ex.B1-property belongs to his grandfather was succeeded by his father and out of it, he and his two brothers got the right over the house property with Ac.0.10 cents appurtenant site therein. Once such is the case, that is also be considered as means for at least $1/3^{\text{rd}}$ share, that was the conclusion arrived from the record of the J.Dr. willfully avoiding to pay the decree debt despite means what is referred above. Thereby, there is nothing to interfere with the impugned order of the lower Court, much less, by admitting the revision pending for the past seven years stalling the execution of the decree debt.

9. Having regard to the above, the Civil Revision Petition is disposed of instead of dismissal by granting three months time from today for the J.Dr. to pay the entire decree debt due along with the E.P. costs, failing which the trial Court shall proceed with the execution petition if not already satisfied the decree debt by the J.Dr. by proof of payment.

10. Consequently, miscellaneous petitions pending, if any, shall stand dismissed. No costs.

Dr. B. SIVA SANKARA RAO, J

Date:28-11-2017

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