

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.5400 OF 2017

ORDER:

Heard Sri Lakshmikanth Reddy Desai, learned counsel for the petitioner, and Sri A.Jaya Sankara Reddy, learned counsel for the respondent apart from perusing the material available before this Court.

2. Respondent herein instituted O.S.No.293 of 2015 on the file of the Principal Junior Civil Judge, Dhone against the petitioner herein for recovery of an amount of Rs.2,92,287/-. The said suit was decreed on 02.09.2015. Thereafter, seeking enforcement of the said decree, on 25.01.2016, the respondent filed E.P.No.79 of 2016 for arrest of the petitioner herein under the provisions of Order XXI Rules 37 and 38 of the Code of Civil Procedure, 1908. The learned Principal Junior Civil Judge, by way of an order, dated 04.09.2017, allowed the said Execution Petition directing issuance of warrant of arrest against the petitioner herein. This revision challenges the validity and legal sustainability of the said order.

3. According to the learned counsel for the petitioner, the order impugned is highly erroneous, contrary to law and is opposed to the very object and intention of the provisions of Order XXI Rules 37 and 38 C.P.C. It is also the submission of the learned counsel that since the respondent/DHR failed to prove the means of the petitioner herein and his intention of evasion of the debt amount, the order impugned in the present revision cannot be sustained.

4. On the other hand, it is contended by learned counsel for the respondent that there is no error nor there exists any infirmity in the impugned order and having regard to the facts and circumstances of the case, the Court below is perfectly justified in ordering arrest of the petitioner herein. It is the further submission of the learned counsel that though the petitioner herein has means to pay the debt amount, he is intentionally evading to pay the same.

5. The material available before this Court discloses that in order to substantiate his case, the DHR/respondent herein examined himself as P.W.1 and filed Exs.P-1 and P-2 documents in support of his case. On the other hand, the JDR/petitioner herein examined himself as R.W.1 and filed no documents in support of his case. In the affidavit filed along with the Execution Petition, DHR/respondent herein stated that though the JDR possess means and has the capacity to pay the E.P. claim, he is intentionally evading to pay the amount. The counter filed by the JDR denied the existence of any means to clear the debt and he also stated in the said counter that he filed an Insolvency Petition *vide* I.P.No.57 of 2012 before the Court of the Principal Senior Civil Judge, Kurnool. A perusal of the order under challenge discloses that after taking into consideration the oral evidence of the petitioner and the respondent, and taking into account the admissions made by the JDR/petitioner herein during the course of cross examination as to running a Tiffin Centre and also payment of sunkam tax to the Municipal Authority of Dhone with regard to the said Tiffin Centre and also taking into consideration the dismissal of I.P.No.57 of 2012 filed by the petitioner herein, the

learned Principal Junior Civil Judge ordered arrest of the petitioner herein. Having regard to the said reasons assigned by the Court below, this Court is not inclined to meddle with the said well articulated order passed by the learned Judge.

6. For the aforesaid reasons, the Civil Revision Petition is dismissed. However, having regard to the nature of controversy, the petitioner/JDR is granted two (2) months time from today to pay the amount due to the respondent/DHR. Therefore, for a period of two (2) months, the impugned order shall not be given effect to. It is also made clear that in the event of failure on the part of the petitioner herein to pay the amount within the time as indicated supra, it is open for the respondent to proceed in accordance with law. There shall be no order as to costs.

7. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

Date : 30.11.2017
AMD

JUSTICE A.V.SESHA SAI

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