

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2969 of 2010

ORDER :

Respondent No.1 died including from the record of the lower Court covered by the impugned order of the lower Court, dated 03.06.2010, in E.P.No.529 of 2007, on the file of the Principal Junior Civil Judge, Machilipatnam. Respondent Nos.2 to 4 herein are the decree-holders. Respondent No.5 is judgment-debtor No.2 and revision petitioner is judgment-debtor No.1. The notices sent to the decree-holders returned left, is a sufficient service.

2. The revision is maintained by the judgment-debtor No.1 against the impugned order for arrest of him for recovery of the decree debt covered by O.S.No.106 of 1992. The grounds in the revision are that the impugned order is without basis and unsustainable and contrary to law and knowingly judgment-debtor No.1 having no properties only to harass in collusion with judgment-debtor No.2, the decree-holder filed the petition and thereby the order of the lower Court for arrest of the judgment-debtor No.1 is liable to be dismissed.

3. Taken as heard the decree-holders/respondent Nos.2 to 4 supra, who are the legal representatives of the late respondent No.1-decree-holder.

4. A perusal of the order running in 18 paras categorically holds the judgment-debtor got landed property and business in rice mill and getting income that is proved from the evidence of PW.1. However,

from the evidence of PW.1-decree-holder, he did not file any proof regarding what are the properties and particulars of the rice mill. It is the evidence of the judgment-debtor as RW.1 that he is suffering from ill-health and has no means and depending upon the mercy of his relatives and the so-called ill-health and at the mercy of his relatives not even mentioned by him in his counter in opposing the relief of arrest sought.

5. RW.2 is one of the witnesses on behalf of the judgment-debtor in saying judgment-debtor No.1 has no means. Basically, the decree-holder has to prove the means of the judgment-debtor and despite means he is willfully avoiding to discharge the decree debt. Once that is lacking for no proof of possessing any properties or rice mill, much less the income, the order of arrest by the trial Court is unsustainable and accordingly set aside and the matter is remitted back to the lower Court to restore and give opportunity further to the parties if at all to adduce any evidence since it is a 10 years old execution petition.

6. Accordingly and in the result, the civil revision petition is allowed in part and remitted back to the lower Court.

Miscellaneous petitions pending, if any, shall stand dismissed.

No order as to costs.

Dr. B. SIVA SANKARA RAO, J

30th November 2017.

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