

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.3351 OF 2017

DATED:14-07-2017

Between:

P. Jagadesh Prasad

... Petitioner

And

Ganapathiraju Vijaya Rama Raju

... Respondent

COUNSEL FOR THE PETITIONER: Mr. G. Tuhin Kumar

COUNSEL FOR THE RESPONDENT: -



THE COURT MADE THE FOLLOWING:

ORDER:

The petitioner, who is an evader of a loan borrowed from the respondent and suffered a decree which was passed as far back as 29.1.2005 and which has attained finality, has filed this revision questioning order dt.19.04.2017 in E.P. No.3 of 2013 in O.S. No.500 of 1999 on the file of the IV Additional Senior Civil Judge, Visakhapatnam, whereby the Court below has allowed the said E.P. filed by the decree holder.

At the hearing, Mr. G. Tuhin Kumar, learned counsel for the petitioner, raised two submissions, namely (i) that under Order XXI Rule 37 of the Code of Civil Procedure, 1908 (CPC) the Court has discretion to issue a show cause notice to the judgment debtor instead of issuing a warrant for his arrest and that in the instant case the lower Court has straight away issued the warrant, and (ii) that in the absence of proper evidence that the petitioner is having means to pay the decretal amount, the lower Court has ordered his arrest and detention.

As regards the first submission of the learned counsel, the E.P. was filed as far back as the year 2013. The petitioner has filed a counter affidavit in November, 2015. A full-fledged enquiry was undertaken by the lower Court during which the petitioner was given an opportunity of adducing oral and documentary evidence. The petitioner examined himself as R.W.1 and got marked Ex.B.1 on his side. Having succeeded in ensuring that the E.P. is kept pending for four years, it lies ill in the mouth of the petitioner to express grievance about non-compliance of Order XXI Rule 37 CPC.

With regard to the second submission of the learned counsel for the petitioner, the lower Court has relied upon Ex.A.1, a certified copy of

sale deed dt.21.6.2007 executed by one Cherukuri Venkatapathi Raju in favour of the petitioner whereunder a house property was purchased by the petitioner. The lower Court has also relied upon the circumstance of the petitioner borrowing a sum of Rs.25,00,000/- from a Nationalized Bank and rightly observed that a person who has capacity to borrow such a huge amount cannot be said to have no capacity to repay a sum of Rs.2,00,000/- payable under the decree which was passed as far back as 29.01.2005 and was allowed to become final.

In these facts and circumstances of the case, I do not find any merit in this civil revision petition and the same is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.4420 of 2017 shall stand disposed of as infructuous.

14-07-2017

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C.V. NAGARJUNA REDDY, J

