

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2702 of 2011

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the orders dated 19.04.2011 in E.P.No.47 of 2009 in S.C.No.59 of 2000 on the file of the Court of Senior Civil Judge, Bhimavaram.

Heard the learned counsel for the petitioner.

A perusal of the record reveals that the respondent herein filed S.C.No.59 of 2000 on the file of the Senior Civil Judge, Bhimavaram for recovery of the suit amount against the petitioner. The trial Court decreed the suit. The petitioner herein filed E.P.No.47 of 2009 under Order XXI Rule 37 CPC for arrest of the respondent-J.Dr. In the trial Court on behalf of the petitioner, P.Ws.1 and 2 were examined and no documents were marked. On behalf of the respondent, R.Ws.1 to 3 were examined and no documents were marked. After considering the oral evidence adduced by both parties and other material available on record, the trial Court dismissed the petition. Hence, this revision.

The contention of the learned counsel for the petitioner is that the trial Court committed grave error while considering the admission made by the respondent-J.Dr. He further submitted that the respondent has taken a false plea that he paid the entire decretal amount. It is a settled principle of law that the burden of proof lies on the person, who filed an application under Order XXI Rule 37 CPC, to prove that the J.Dr. is having sufficient means to satisfy the decretal amount and intentionally and wilfully avoiding to pay the decretal amount. It is not

uncommon that the parties to the proceedings may depose evidence to suit their claim. Any amount of oral evidence without documentary evidence is of no avail. In the instant case, the petitioner did not produce even a single scrap of paper to establish that the respondent is having immovable property and intentionally avoiding to pay the decretal amount. On the other hand, the oral testimony of R.Ws.2 and 3 clearly reveals that the respondent herein paid an amount of Rs.7,500/- to the petitioner. Another interesting aspect in this case is that the petitioner herein filed an application for attachment of the salary of the respondent/ J.Dr. and the same was in force for a period of 24 months. For the reasons best known, the petitioner suppressed the factum of attachment of the salary of the respondent/ J.Dr. and filed the petition for arrest of the J.Dr. If attachment of salary was in force continuously for a period of 24 months, there should be a gap of 12 months. It appears, during this 12 months period, the petitioner filed the petition under challenge. Learned counsel for the petitioner submitted that the respondent admitted that he is having a bike. At the same time, the respondent deposed that he paid the entire decretal amount to the petitioner in the presence of elders. The petitioner has not discharged the burden of proof cast on him. Moreover, for one reason or other, the petitioner did not disclose the factum of attachment of salary in his chief examination. The said fact was considered by the trial Court in para 8 of the judgment.

“He did not disclose in his evidence as to how much amount recovered by way of salary attachment and whether the attachment of salary is for 12 months or 24 months for recovery of said amount of Rs.2,233/-. If really attachment was for 24 months continuously he cannot seek for attachment of the salary of the J.Dr. which is finally exempted in the same decree. The said material is not available in the evidence of p.W.1.”

In such circumstances, I am fully agreeing with the findings recorded by the trial Court that the petitioner failed to prove that the respondent has sufficient means to pay the decretal amount. There is no illegality, irregularity or impropriety in the orders of the trial Court, which warrants interference of this Court. Viewed from factual or legal aspects, the revision petition lacks merits and bonafides.

Hence, the Civil Revision Petition is dismissed. Miscellaneous Petitions pending, if any, shall stand closed.

22nd March 2017.
Fns

T. SUNIL CHOWDARY, J

