

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6542 of 2016

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure is filed by the petitioner-decree holder questioning the order dated 23.08.2016 passed in O.E.P.No.67 of 2014 in O.S.No.284 of 2012 by the I Additional Junior Civil Judge, Chittoor, whereby the E.P. filed by the petitioner under Order XXI Rules 37 and 38 of the Code of Civil Procedure seeking arrest and detention of the respondent-judgment debtor in civil prison for recovery of E.P. amount with further interest and costs was dismissed.

Revision petitioner filed O.S.No.284 of 2012 for recovery of Rs.57,000/- from the respondent, which was decreed by the Court below vide judgment and decree dated 10.07.2014 along with interest @ 6% per annum and costs. Seeking realization of the decretal amount of Rs.95,303/-, the petitioner filed O.E.P.No.67 of 2014 before the Court below seeking arrest and detention of the respondent, which was dismissed. Challenging the same, present revision is preferred.

A counter came to be filed before the Court below stating that he is suffering from schizophrenia and is not having any source to pay the amount. It was further urged that being insane he cannot be send to civil prison.

After considering the rival submissions made, the Court below rejected the request of the petitioner on the ground that the respondent was suffering mental illness and is taking treatment for the same.

On 17.01.2017 this Court issued notice to the respondent. *In spite* of service of the same, there is no representation on behalf of the respondent.

Heard the learned counsel for the petitioner and perused the material on record.

It is not in dispute that there is a decree in favour of the petitioner directing the respondent to pay the decretal amount with interest and costs. The main ground on which the Court below rejected the request of the petitioner was that the respondent is suffering with schizophrenia. The said finding was based on a medical certificate dated 04.04.2016 issued by the Christian Medical College, Vellore.

Learned counsel for the petitioner would submit that there is no evidence to show that the respondent was suffering with mental ill-health as on the date of decree or at the time of filing of E.P. He further contends that the respondent himself was examined as R.W.1 and his evidence nowhere indicates that he was taking treatment for his mental illness.

As seen from the record, R.W.1 was cross-examined on 16.09.2015 and 13.07.2016. In the cross examination, number of suggestions were put to the respondent to which cogent answers were given. It was elicited that he took treatment in CMC from 1998 to 2012 and is still continuing the medication by purchasing medicine from the medical shop basing on the prescriptions issued by CMC. A perusal of the medical certificate would show that the respondent took treatment in CMC hospital from 28.10.1998 to 18.02.1999; 22.04.2005 to 27.09.2006; 09.07.2007 and 24.02.2009 to

07.11.2012. Thereafter, he was not reviewed in the hospital. The certificate further reveals that the respondent was treated for emotional disorder for which he took long term regular treatment. Hence, the issue that arises for consideration is 'whether the respondent is suffering with mental illness even after November, 2012?'.

Having regard to the answers elicited from the respondent during his cross examination and the period of treatment taken by the respondent, this Court is of the view that the respondent failed to adduce proper evidence showing that he was under medication either at the time of date of decree or filing of E.P. It is also to be noted that in the impugned order, the Court below held that it is a fit case to proceed against the properties of the respondent rather than proceeding for his arrest and detention.

Considering all these circumstances, the order under challenge is set aside and the matter is remanded to the Court below to decide the issue afresh by issuing notice to the respondent and then take steps in accordance with law, uninfluenced by the observations made herein.

Accordingly, the Civil Revision Petition is disposed of.

Miscellaneous petitions pending in this revision, if any, shall stand closed. No costs.

JUSTICE C. PRAVEEN KUMAR

10.03.2017
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