

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION Nos.5559 & 5560 OF 2017

DATED : 15.12.2017

Between :

Samba Balaiah S/o.Sri Bakkaiah,
Aged about 70 yrs, Occu : Agriculture,
R/o.Inapoor Village, Cheriya Revenue Mandal,
Warangal District & others.

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Petitioners

And

Mogulla Yadaiah S/o.Sri Narsaiah,
Aged about 31 yrs, Occu : Agriculture,
R/o.Inapoor Village, Cheriya Revenue Mandal,
Warangal District & another

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Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION Nos.5559 & 5560 OF 2017

COMMON ORDER :

Heard learned counsel for the petitioners/Judgment Debtors and learned counsel for the 1st respondent/Decree holder.

2. These two revisions are filed by the J.Drs, aggrieved by the order of Principal Junior Civil Judge, at Jangaon in allowing E.P.No.31 of 2014 and sending the J.Drs to civil prison for a period of one month respectively.

3. It is not in dispute that the defendants were set *ex parte* and an injunction was granted in favour of the plaintiff. Alleging that inspite of injunction granted, the defendants are interfering into the possession of suit schedule property, the plaintiff filed E.P.No.31 of 2014. Defendants have not contested the E.P. also and taking the evidence of plaintiff and the decree passed, the Court below allowed the E.P., and issued arrest warrant against the J.Drs.

4. Learned counsel for the petitioners contend that even though the J.Drs have set *ex parte*, still the Court is required to follow the procedure as prescribed under Order 21 Rule 32 of Code of Civil Procedure, before allowing the E.P. and arrest of J.Drs. According to learned counsel, two primary requirements to invoke the provision is that opportunity must be afforded to the J.Drs to obey the decree and inspite of affording due opportunity the decree is not obeyed, then the Court can take coercive steps. The Court is also required to see whether the alleged disobedience was wilful.

Learned counsel by placing reliance on the decision of this Court in “**Koya Ranga Reddy and others Vs Koya Narayana Reddy and others,¹**” would further submit that even in the absence of Judgment Debtors, these two parameters are required to be observed by the Court before passing an order in the E.P.

5. Learned counsel therefore, submits that as these two parameters were not looked into by the Court below, the matter may be remitted to the Court below for consideration of the E.P., afresh, after affording due opportunity.

6. Having regard to these submissions, and the principle of law laid down by this Court in **Koya Ranga Reddy’s** Case, learned counsel for the respondent also fairly submits that the matter may be remitted to the Court below. However, he would submit that the *ex parte* decree passed still holds and the same is not assailed and that the J.Drs have violated the decree granted in favour of the plaintiff.

7. In Paragraph No.7 of the said judgment this Court held as under :

“From a perusal of the Rule, it is evident that mere existence of a decree for perpetual injunction, or for that matter, a mere complaint, by the decree holder against the judgment-debtor, is not sufficient to direct the detention of the judgment-debtor in civil prison. Two facts are necessary to be proved by the decree holder. In a way, they are two facets of the same phenomenon. The first is that the judgment-debtor must have an opportunity to obey the decree, and the second is that despite such an opportunity, he had wilfully failed to obey it. To state in different terms, mere failure of a judgment-debtor to obey the decree, when he did not have an opportunity to do so; cannot constitute a ground to order his detention in civil prison. Similarly, if the failure is not wilful, the Executing Court can not direct his detention, notwithstanding that

¹ 2007 (3) ALT 689

the judgment-debtor had an opportunity to obey the decree. Both the facts must be proved. By their very nature, they need to be established through sufficient evidence, to the satisfaction of the Court. The fact that the judgment-debtor remained, or was set ex parte, does not relieve the decree-holder, of his obligation and burden, to prove the ingredients of Rule 32.”

8. In the instant case, it appears from the record that the parameters laid down by this Court in ***Koya Ranga Reddy’s*** case are not observed before granting the relief to the decree holder in E.P.No.31 of 2014. Therefore the order impugned is liable to be set aside and the matter is remitted to the Court below for consideration of the E.P., afresh. The petitioners/J.Drs shall enter their appearance and file their affidavits within three weeks and the Court below is requested to dispose of the E.P., as expeditiously as possible, after affording due opportunity to the parties.

9. With the above observations, the Civil Revision Petitions are allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these civil revision petitions shall stand closed.

P.NAVEEN RAO,J

15th December, 2017
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