

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.3984 of 2017

ORDER:

This Civil Revision Petition is filed by JDR No.2 aggrieved by the order dated 18.07.2017 in E.P.No.71 of 2016 in O.S.No.100 of 2011 2016 passed by learned Principal Senior Civil Judge, Kadapa allowing Execution Petition filed by decree-holder to arrest JDR No.2 for realization of E.P.amount.

2) Plaintiff's suit for recovery of money on the strength of pronote dated 09.02.2009 was decreed by the trial Court vide order dated 03.03.2015. Thereafter, the decree-holder demanded JDR No.2 several times to satisfy the decree, but in vain. Therefore, he filed Execution Petition contending that JDR No.2 though working as Pharmacist in Government Dental College, RIMS, Kadapa and earning Rs.15,000/- apart from owing immovable property, did not choose to satisfy the decree.

3) Opposing the same, JDR No.2 filed counter denying the petition averments and contended that he is working only as outsourcing employee in Government Dental College and Hospital, Kadapa and earning Rs.7,245/-; the said amount is not sufficient to maintain his family and he has no other source of income. He also contended his salary was enhanced to Rs.15,000/- from August, 2016 onwards and he is drawing net salary of Rs.12,900/- and there is already Court attachment of Rs.2,500/-. He further contended decree holder already

filed a separate E.P. in O.S.No.1 of 2012 and obtained attachment of salary of Rs.2,500/- and hence the present EP is filed only to harass him and thus prayed to dismiss the same.

4) The learned Executing Court observed that judgment debtor in his written statement—Ex.A1 admitted that he had sufficient means and there is no necessity for him to borrow money from plaintiff. It also observed, in the cross-examination JDR himself admitted that he sold his property to one M.Venkata Subba Reddy and others for a sum of Rs.1,07,24,000/- under a registered sale deed, which is not a small amount. This significant piece of admission is sufficient to conclude JDR is having sufficient means to discharge the EP amount. Accordingly, EP was allowed and JDR No.2 was directed to pay the entire EP amount within one month from the date of order, failing which he shall be committed to civil prison for one month on payment of process.

Hence, the instant CRP.

5) This Court while ordering personal notice granted interim stay of all further proceedings pursuant to decree and judgment in O.S.No.100 of 2011.

6) Heard arguments of Ms.Sodum Anvesha, learned counsel for petitioner and Sri Mohd. Ghulam Rasool, learned counsel for respondent No.1. Respondents 2 to 4 are not necessary parties vide cause title.

7) On hearing both sides, I find no merits in the CRP for, the record shows JDR No.2 despite having sufficient means to discharge the EP amount willfully neglected to do so. His means are thus:

a) Firstly, even according to his admission, he has been working as Pharmacist in Government Dental College, Kadapa. However, his case is that he has been working only as an outsourcing employee and till 2015 he was getting Rs.7,245/- and his salary was enhanced to Rs.15,000/- from 2016. However, in order to prove that he was working only as an outsourcing employee and getting Rs.15,000/-, JDR No.2 did not produce any record. Therefore, his employment should be taken as a permanent employment.

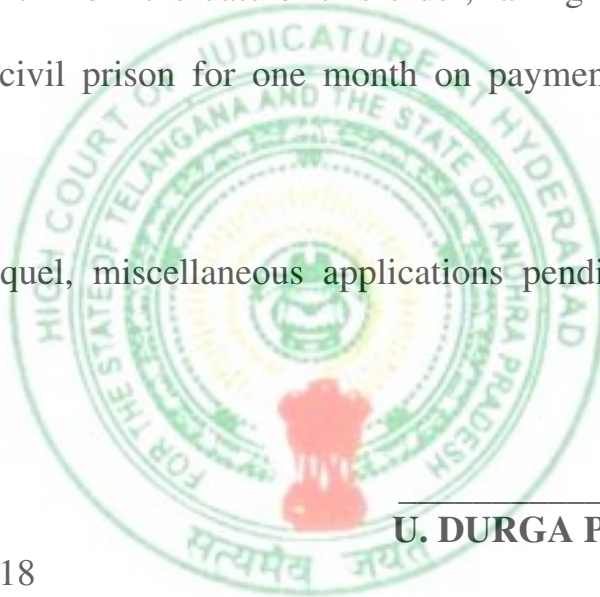
b) Secondly, in the cross-examination, at first he admitted that H.No.10/760 belongs to him. However, immediately he changed his version and stated that H.Nos.10/759 and 760 belonged to his mother and she executed a Will and bequeathed both the houses in favour of his brother. However, he did not produce the copy of the Will to show that he did not get house property after the death of his mother. Therefore, his earlier admission that H.No.10/760 belongs to him can be accepted to show that he has means to discharge the EP amount.

c) Nextly, JDR No.2 admitted that he sold property in Sy.No.15/1 in an extent of Ac.0.44 cts. for sale consideration of Rs.1,07,24,000/-. However, his contention is that he got only 1/10th share therein and the said property was sold long back and at present he has no means. In this regard also the petitioner has not produced any evidence before the

Executing Court. Even assuming for the argument sake that the property was sold long back and he spent away the amount towards his share, still it cannot be said for a moment he is penniless at present. He is an employee in Government Dental College, Kadapa and drawing sumptuous salary and he is having house bearing No.10 /760. Therefore, he cannot plead inability to discharge the EP amount.

8) Hence, I find no merits in the CRP and the same is dismissed with a direction to JDR No.2 to pay the entire EP amount to decree-holder within one month from the date of this order, failing which he shall be committed to civil prison for one month on payment of process. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



U. DURGA PRASAD RAO, J

Date: 29.01.2018

Note: Issue C.C by tomorrow.

(b/o)
Murthy