

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**C.R.P.No.1497 OF 2012**

**ORDER:**

This revision petition is filed under Section 115 C.P.C. questioning the order dated 29.02.2011 passed in E.P.No.49 of 2010 in O.S.No.57 of 2004 by the Principal Junior Civil Judge, Kavali, SPSR, Nellore District ordering arrest of the petitioner/Judgment Debtor under Order XXI Rule 38 C.P.C. on payment of process for realization of the decree debt.

The respondent/DHr obtained a decree for recovery of an amount and the total amount due by the date of EP was Rs.31,243/-, which is inclusive of costs. It is alleged in the affidavit filed along with E.P. that the petitioner/JDr possessed sufficient means to pay the amount and neglected in payment of debt due under the decree. Whereas the petitioner/JDr filed counter contending that he has no means to pay the decree debt and that he did not possess any moveable or immoveable property and prayed for dismissal of the execution petition.

During enquiry, on behalf of the decree holder, the PW.1 was examined and on behalf of the Judgment Debtor, RW.1 was examined and no documents were marked on either side.

Upon hearing both counsel, the Court below found that the petitioner/JDr is working as Talari for the last four years at Pedda Annaluru of Kaligiri Mandal and it is a permanent post and thereby earning sufficient income and also found that the petitioner/JDr failed to discharge the debt intentionally though he possessed sufficient means to discharge the decree debt and ordered arrest of the petitioner under Order XXI Rule 38 C.P.C. on payment of process.

The impugned order mainly assailed on the ground that though no evidence is available, the Court below concluded that the petitioner is working as Talari, but the income of the Talari is meager and not sufficient to meet both ends and therefore, the impugned order passed by the Court below is erroneous.

During hearing, learned counsel for the petitioner brought to the notice of this Court that the petitioner deposited Rs.50,000/- by order dated 29.03.2012, but expressed his inability to pay decree debt. It is also contended that the conclusions arrived by the executing Court are not based on any material and prayed to set aside the impugned order.

The main ground of the respondent is that the petitioner though possessed sufficient means to discharge the decree debt intentionally failed to pay the same and in support of his contention he examined PW.1 that the petitioner has sufficient means, but did not produce any iota of evidence to substantiate the evidence. The evidence of RW.1 is that he is working as Talari for the last four years at Pedda Annaluru of Kaligiri Mandal and it is a permanent post. When the petitioner was engaged as employee in the Revenue Department, it is for him to produce the salary particulars before the Court to prove that the amount he is drawing is not sufficient to meet both ends, but did not produce any material and suppressed the factum of his working as Talari and when the petitioner admitted that he is working as Talari, it is for him to discharge initial burden that he did not possess sufficient means to discharge the decree debt, but for the reasons best known to the petitioner did not produce his salary particulars from competent authority to establish that he did not possess sufficient means.

Therefore, the executing Court rightly believed that the petitioner possessed sufficient means and avoided to discharge the decree debt, as

such the impugned order is free from any illegality or irregularity, warranting no interference of this Court exercising power under Section 115 C.P.C. as the jurisdiction of this Court under Section 115 C.P.C. is limited and such jurisdiction can be exercised by this Court only when the Court below passed any order appears to have exercised not vesting on it by law or failed to exercise jurisdiction vested or to have acted on its jurisdiction illegally or with material irregularity. In the absence of any such illegality or irregularity in exercise of jurisdiction by the Court below or failure to exercise the jurisdiction that vested on it or exercise by excessive jurisdiction that conferred on it. In the absence of establishing any of these three grounds, this Court cannot interfere with the order passed by the Court below in execution petition. Therefore, I find no merit in the revision petition and it is devoid of merits and the same is liable to be dismissed at the stage of admission.

In the result, the civil revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

**JUSTICE M. SATYANARAYANA MURTHY**

13.03.2018  
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