

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No.1974 of 2018

O R D E R:

This revision petition is filed questioning the order of arrest dated 07.03.2018 in EP.No.138 of 2017 in OS.No.113 of 2015 passed by the Principal Junior Civil Judge, Vizianagaram.

Heard Sri P.Durga Prasad, learned counsel for the petitioner and Sri Aravala Rama Rao, learned counsel for the respondent.

Learned counsel for the petitioner argued that an order under Order XXI, Rule 37 CPC., should not be passed for the mere asking and that the Court should be satisfied that the judgment debtor is possessed with sufficient means and he has deliberately avoiding paying the decretal debt. As it is an order that is only depriving of liberty of a person, learned counsel submits that the pre-conditions should be scrupulously followed. He points out that from the evidence that is introduced in this case nothing was elicited about the income or the assets of the judgment debtor. Therefore, he contends that the order of arrest should not have been passed without adequate evidence being available. He relies upon judgment of the Hon'ble Supreme Court of India reported in ***Jolly George Varghese v. The Bank of Cochin*¹**.

¹ AIR 1980 SC 470

In reply thereto, learned counsel for the respondent argues that the judgment debtor admitted the liability and that the decree was passed. He states that the decree holder should be allowed to reap the benefits of his decree and that the judgment debtor is a regular driver working for a firm called Honey Travels. Therefore, he prays that the decree holder should be allowed to enjoy the fruits.

This Court appreciates the concern of the lower Court that the decree holder should realize the fruits of the decree, but the fact overlooked by the Court below is the distinction between regular execution petition and an execution petition for arrest. As the order for arrest has to the effect of depriving the liberty of a person, the conditions set out by the higher Courts should be scrupulously followed. As held by Courts on many earlier occasions, unless there is a deliberate intention not to pay despite possessing sufficient means, an order of arrest should not be granted.

In the case on hand, the decree holder was examined as PW.1. He did not file any documents to show that the judgment debtor was possessed sufficient means. The only documents exhibited by him are the legal notice and postal acknowledgment. He denied a suggestion that judgment debtor has no means to pay the decretal amount and agrees that he did not produce any document in evidence judgment debtor owns cars etc.

In the light of this evidence and as the cross-examination of the judgment debtor also did not elicit anything concrete, this Court is of the opinion that the impugned order that is passed is not correct in the facts and circumstances of the case.

Therefore, the order dated 07.03.2018 is set aside and the civil revision petition is allowed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed.

Date: 20.12.2018
KLP

D.V.S.S.SOMAYAJULU, J