

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

**CIVIL REVISION PETITION No. 2271 OF 2018**

**ORDER:**

This civil revision petition is filed under Section 115 of the Code of Civil Procedure (for short, 'CPC') challenging the order dated 17-10-2017 in E.P.No. 12 of 2016 in O.S.No. 50 of 2013 on the file of the Court of learned Principal District Judge, Kadapa (for short, 'the executing Court'), whereby it allowed the above E.P. filed under Order XXI Rules 37 and 38 of CPC for arrest of the revision petitioner.

2. The respondent herein obtained decree for recovery of amount. Since the petitioner did not pay the amount, the respondent initiated execution proceedings for recovery of the amount. The petitioner filed counter affidavit resisting the petition *inter alia* contending that he is receiving meager salary from his employment and he has to maintain his family consisting of more persons; that he has no other source of income except the income from his employment and that he did not possess any movable or immovable property. During inquiry, on behalf of the respondent, P.W.1 was examined and on behalf of the petitioner, R.W.1 was examined and no documents were marked on either side. Based on the evidence on record, the executing Court allowed the E.P. by the order under challenge.

3. Feeling aggrieved, the present revision is filed on the ground that he has no means except the salary from his employment as Junior Assistant and hat he never neglected and refused to pay the decree debt due to the respondent but the executing Court committed an error in coming to the conclusion that he has got sufficient means to pay the debt due under the decree.

4. At the hearing, Smt. Nimmagadda Revathi, learned counsel for the petitioner, has contended that mere earning income from employment is not sufficient and the petitioner is only a Class-III employee and that in the absence of any finding that he has got any other source of income and able to discharge the decree debt at a time, he cannot be committed to civil imprisonment for realization of the decree debt by exercising power under Order XXI Rules 37 and 38 of CPC.

5. Before deciding the real controversy, I deem it appropriate to extract Section 115 of CPC which limits the jurisdiction of this Court. According to Section 115 (1) of CPC, the High Court may call for the record of any case, which has been decided by any subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the Court may make such order in the case as it thinks fit provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. Thus, it is clear from Section 115 of CPC that the powers of this Court are limited and this Court can exercise such power to interfere with the order passed by the Court subordinate to it in the circumstances narrated above. In the case on hand, the petitioner suffered a decree for recovery of amount and he failed to discharge the decree debt and that the respondent initiated proceedings for recovery of amount by filing E.P. under Order XXI Rules 37 and 38 of CPC alleging that the petitioner possessed sufficient means to pay the

decree debt and he refused and neglected to pay the decree debt. It is an undisputed fact that the petitioner is working as Junior Assistant in Sales Tax Department and earning Rs.40,000/- p.m. but despite it, he did not discharge the debt due. The evidence recorded by the executing Court disclosed that the petitioner is working as Junior Assistant and earning Rs.40,000/- p.m. but expressed his inability to pay the debt and requested to proceed for attachment of salary under Order XXI Rule 48 of CPC subject to Section 60 of CPC. This part of evidence itself is suffice to conclude that the petitioner neglected to pay the debt due despite possessing sufficient means to pay the same. Hence, the order impugned in the revision does not warrant interference of this Court exercising power under Section 115 of CPC.

6. Learned counsel for the petitioner at the end requested this Court to permit the petitioner to pay the decree debt in installments. This Court while exercising power under Section 115 of CPC cannot convert a decree for payment of money into installments. However, it is left open to the petitioner to file appropriate application for grant of installments under Order XX Rule 11 of CPC.

7. With the above observation, the civil revision petition is dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 29-06-2018.  
JSK

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**M.SATYANARAYANA MURTHY, J.**