

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

Civil Revision Petition No. 2754 of 2018

Order:

This Civil Revision Petition is filed questioning the judgment and decree passed by the learned Principal Junior Civil Judge, Vizianagaram, in EP No.92 of 2017 in OS No.201 of 2007, dated 01.03.2018.

By the order impugned, learned counsel for the petitioners questions the manner in which the order of arrest of his clients/revision petitioners is affected. He pointed out that just basing on the affidavit and without taking any oral or documentary evidence the Court below directed the arrest of the petitioners/Judgment Debtors 1 to 4 for a period of one month. He relied upon a judgment of the learned single Judge of this Court reported in Koya Ranga Reddy v. Koya Narayana Reddy¹ to support his case.

In reply thereto, learned counsel for the respondent/DHR argued that the contents of the affidavit filed in the lower Court were not denied or traversed by the judgment debtors and, therefore, he supported the orders passed and stated that the Court below was right in relying upon the contents of the affidavit.

This Court has perused the impugned order that is passed and notes that a very cryptic order is passed in this case. In fact, the learned Junior Civil Judge in paragraph 4 of the order held as follows.

“4. Perused the contents of the petition and other material available on record. Due to the loosing of the

¹ 2007 (3) ALD 4

case, there is every likelihood that the JDRs may indulge in wrongful acts.”

It is not clear what material was perused by the learned Junior Civil Judge in coming to the conclusion, because the appendix of evidence states that no oral and documentary evidence was adduced on either side. The detention of the Judgment Debtors in civil prison results in deprivation of their personal liberty. Therefore, the Court has to strictly follow the procedure under law and come to a firm conclusion that there is a deliberate flouting of a judicial order.

The learned single Judge of this Court in Koya Ranga Reddy's case (supra) has clearly dealt with the manner in which such an order is to be passed. The learned single Judge has clearly noted that failure and willful disobedience of the Court order must be established through sufficient evidence. Learned single Judge also held that the fact that the judgment-debtor remained, or was set *ex parte*, does not relieve the decree-holder of his primary obligation to prove the case. Learned single Judge has also noted in para 11 that since the personal liberty of the judgment-debtors is involved, strict compliance of the relevant provisions is necessary. In this view of the matter, this Court is of the opinion that the impugned order passed is devoid of reasons and clearly no material is available for the learned Junior Civil Judge to come to the aforesaid conclusion.

Hence, the CRP is allowed and the impugned order is set aside. The matter is remanded to the lower Court with a direction to follow the relevant provisions of law and also the judgment cited in this order and

then pass appropriate orders in accordance with law. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this CRP shall stand closed.

D.V.S.S. SOMAYAJULU, J.

Date: 13.07.2018
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