

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.5013 of 2011

ORDER

This revision under Section 115 of CPC is filed challenging the order dated 30.08.2011 passed in O.E.P.No.50 of 2010 in O.S.No.961 of 2007 by the I Additional Junior Civil Judge, Chittoor, ordering arrest of judgment-debtor in the event of failure to pay the decretal amount within the stipulated time of two months from the date of the order.

2. The respondent herein obtained decree for recovery of amount and filed execution petition for realisation of the decretal amount invoking Order XXI Rules 37 and 38 of CPC by arrest of the judgment-debtor and committing him to civil prison, alleging that she obtained decree against the judgment-debtor, petitioner herein, but the petitioner failed to pay the decretal amount despite possessing movable and immovable properties and also sufficient funds to discharge the decretal debt and that he is intentionally evading to pay the same and therefore, she sought to commit him to civil prison for realisation of decretal amount.

3. The judgment-debtor filed counter in the execution petition denying the material allegations, *inter alia*, contending that he is an agriculturist and did not possess either any movable or immovable properties and that he was suffering from ill-health and prayed to dismiss the execution petition.

4. During enquiry, the decree-holder was examined as P.W.1 and no document was marked on her behalf. No evidence was adduced and no document was marked on behalf of the judgment-debtor.

5. P.W.1, decree-holder, stated in her evidence that the judgment-debtor has possessed sufficient means to pay the decretal amount and the said evidence was believed in the absence of any evidence to rebut the testimony of P.W.1 and that when the petitioner/judgment-debtor did not enter into witness box to substantiate his contention that he did not possess any means to pay the decree debt or own any property either movable or immovable and that he has no capacity to discharge the debt, the executing Court shall draw an adverse inference against him that what he pleaded is not true.

6. As there was no evidence to prove the case of the petitioner-judgment-debtor that he had no means to pay the decretal amount and whereas the decree-holder is able to prove that the judgment-debtor has got sufficient means and owned valuable movable and immovable properties, but neglecting to pay the decretal debt, the executing Court recorded a finding which warrants no interference of this Court since the petitioner did not enter into witness box to testify in support of his case. Hence, the order of the executing Court does not suffer from any illegality warranting interference of this Court by exercising power under Section 115 of CPC since the jurisdiction under Section 115 of CPC is limited and according to it, this Court can call for records and examine if the Court finds that the executing

Court failed to exercise jurisdiction that vested on it or exercises its jurisdiction irregularly or illegally. But none of these contentions are urged in the present revision. Therefore, the Civil Revision Petition fails and is liable to be dismissed as it lacks merit.

7. In the result, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

7th March, 2018

sj

M. SATYANARAYANA MURTHY, J

