

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2994 of 2018

ORDER:

The unsuccessful defendant/Judgment Debtor ('JDr', for brevity) filed this civil revision petition, under Section 115 of the Code of Civil Procedure, 1908, ('the Code', for short), assailing the order, dated 27.04.2018, of the learned Junior Civil Judge, Parchur, passed in E.P.No.24 of 2015 in O.S.No.145 of 2003.

2. I have heard the submissions of Sri *Yarlagadda Venkateswarlu*, learned counsel appearing for the revision petitioner/JDr; and of Sri Marri Venkata Ramana, learned counsel appearing for the respondent/DHr ('DHr', for brevity). I have perused the material record.

3. The facts relevant for consideration, in brief, are as follows: 'The plaintiff/DHr obtained a decree against the JDr for Rs.68,630/- recoverable with interest on the principal sum of Rs.44,790/- @ 24% per annum from the date of the suit (08.07.2003) till the date of the decree & @ 6% per annum from the date of the decree till the date of realisation and for costs. The DHr filed the Execution Petition in E.P.No.24 of 2015 under Order XXI Rule 37 of the Code for realisation of the said decree debt and sought arrest and detention of the JDr in civil prison. In support of the request in the Execution Petition, the DHr had also filed an affidavit. The JDr filed a counter and resisted the Execution Petition. During the course of enquiry, the DHr and JDr were examined as PW1 and RW1 and Exhibits A1 to A3 (Exhibits P1 to P3) and Exhibits R1 & R2 were marked. On merits and by the order impugned in this revision, the

learned Junior Civil Judge, Parchur, having overruled the objections of the JDr, allowed the Execution Petition and directed the office of the Court to issue warrant under Order XXI Rule 38 of the Code against the JDr on payment of process by the DHr for arrest of the JDr and sending him to civil prison for realisation of the EP amount with subsequent interest and costs. In the impugned order, it is also directed that the warrant shall be executed on or before 09.05.2018. Aggrieved thereof, the JDr filed this revision petition.'

4. Now the points for determination are:

1. **Whether the DHr made out valid and sufficient grounds for ordering the execution of the decree by arrest and detention of the JDr in civil prison as per procedure established by law?**
2. **Whether the impugned order is liable to be set aside in the facts and circumstances stated by the JDr?**
3. **To what relief?**

5. POINTS:

5.(a) The introductory facts, which lead the DHr to file the Execution Petition for arrest and detention of the JDr in civil prison are already stated supra, in detail. Order XXI of the Code contemplates the execution of a decree by ordering arrest of the JDr and Section 51 of the Code lays down that the Court may, on the application of the decree holder, order execution of the decree *inter alia* by ordering arrest and detention of the JDr in prison where arrest and detention is permissible. The proviso to the said section states that where the decree is for payment of money, execution by detention in prison shall not be ordered unless, after giving the JDr an opportunity of showing cause why he should not be committed to

prison and unless the Court, for reasons to be recorded in writing, is satisfied among other things, that the judgment debtor is or has had since the date of decree the means to pay the amount of the decree or some substantial part thereof and had refused or neglected to pay the same. In an execution petition filed for arrest and detention of the JDr in a civil prison, the initial onus of proof will be on the decree holder to establish that the JDr has got sufficient means to pay the amount of the decree or some substantial part thereof, but the JDr has wilfully refused or neglected to pay the same with the object or effect of obstructing or delaying the execution of the decree.

5.(b) Coming to the case on hand, it is necessary to first advert to the case of the DHr, which is as under: 'The JDr is having sufficient movable and immovable properties, viz., a house and Ac. 3.00 cents of land of a value of rupees one crore besides a tractor worth Rs.5,00,000/-. He is having sufficient means to pay the decree debt. However, in order to harass the DHr, the JDr did not pay the amount due under the decree. The JDr is a person of good health and is capable of discharging the decree debt by making payment in one lump sum. He is intentionally avoiding to pay the decree debt. If his arrest is ordered and an arrest warrant is issued against the JDr, he will pay the decree debt.' Be it noted at this stage that the DHr, having reiterated his said case in his examination-in-chief, exhibited certified copy of 1-B Account, exhibit A1, a bunch of copies of no.3 Account of Adusumalli Village, exhibit A2 (in 7 sheets), and, a copy of the R.C. Book of the tractor bearing registration no.AP 27 BJ 0356, exhibit A3. In his cross-examination, the following points were elicited: 'He has not gone through the counter of the JDr. The JDr is having land in an extent of Ac. 3.00

cents and one house in Adusumalli Village. He does not know whether the said Ac. 3.00 cents of land is a single block or whether it is in different bits. He came to know that the JDr owns a house, as the JDr has stated so to him. The name of the mother of the JDr is Yarlagadda Vasantha Kumari. She is alive.’ He admitted the suggestion that the properties referred to in exhibits A1 to A3 are in possession and enjoyment of the said Vasantha Kumari, the mother of the JDr. However, he denied the suggestions that the JDr has nothing to do with the properties referred to in exhibits A1 to A3 and that the JDr is not having any properties and a tractor.

5.(c) Now it is necessary to refer to the case of the JDr, which is as under: ‘He is an agriculturist. He used to cultivate land taken on lease. Due to continuous failure of crops in the last several years, he sustained huge loss. He is indebted to several persons. His financial position is totally strained. He does not own any properties. He has no means to pay the decree debt. He is not in a position to pay the decree debt to his creditors in full. He is suffering with severe ill-health. He has no intention to evade payment of the decree debt. There are no grounds to allow the Execution Petition. The DHr intentionally filed the Execution Petition to harass him.’ Having reiterated the said contentions in his examination-in-chief, he exhibited a certificate issued by Panchayat Secretary, Adusumalli Village, exhibit R1; and, a certificate issued by Tahsildar, Parchur, exhibit R2. In his cross-examination, the following points were elicited: ‘Yarlagadda Venkatadri is his father. He is having one elder brother. He does not know the details of lands and the properties to which his father succeeded. It is true that his family succeeded to a Daba house bearing Door No.1-86/A. Rathnakumari is his wife and

Yaswanth & Yasmitha are his children. He is residing in a house belonging to one Ravi Krishna Rao on payment of a monthly rent of Rs.300/-. He, his mother, wife and children are having Aadhar Cards. The door number in all the Aadhar Cards is shown as Door no.1-86/A. He does not know whether after the death of his father, house tax is being paid in the name of his mother. Pattadar pass books and title deed documents are standing in the name of his mother in respect of the land in Adusumalli Village. He studied upto 7th class. He does not know whether after the death of his father, the properties are mutated in the name of his mother in the revenue records and pattadar pass books and title deeds were issued in her name or not. He is not having driving licence. He does not drive a tractor. He does not know whether his mother is cultivating the lands personally or whether she has leased out the lands. There are no disputes between him and his mother. They are on cordial terms. His children, aged 4 and 11 years respectively, are studying in Universal Techno School in Inkollu, for the last three years. It is true that they are studying as Semi-Residential Students. The school fee for both of them is Rs.50,000/- per annum. His only source of income is coolie work. He earns Rs.300/- per day. He is having no documents to prove that he is residing in the house of Ravi Venkata Krishna Rao as a lessee. He can examine the said Ravi Venkata Krishna Rao and the VRO, who had issued exhibits R1 & R2. He did not file any documents to prove that the properties covered by exhibits A1 & A2 are the exclusive properties of his mother.' He admitted the following suggestions: 'It is true that the properties covered by exhibits A1 & A2 are the properties of my mother and for the said properties, my mother was given pattadar passbooks and title deed documents. It is true that the tractor is in the name of my

mother. I do not know whether she purchased the tractor by availing loan or after paying cash. It is true that the lease amount per acre in the village is between Rs.25,000/- to Rs.30,000/- per annum. It is true that the property covered by exhibits A1 & A2 is fit for raising commercial crops. It is true that the suit debt was incurred for purchasing pesticides and fertilizers for use in my lands.’ He denied the following suggestions: ‘It is not true to suggest that the property covered by exhibits A1 & A2 is the ancestral property and that after the death of my father, the same devolved upon me and others and that I purchased pesticides and fertilizers from the shop of the DHr and that the properties are mutated in the name of the mother in the revenue records and that I am giving false evidence that I have no income to pay the decree debt and that I and my mother are residing in the house bearing Door No.1-86/A and that the tractor, which I purchased in the name of my mother, belongs to me and that I have got means to pay the decree debt, but, I am giving false evidence and that I obtained exhibits R1 & R2 by managing the revenue authorities.’

5.(d) I have carefully gone through the pleadings and the entire evidence. From a careful examination of the evidence brought on record, the following facts are noticeable: ‘Exhibit A1, the certified copy of 1-B Account, and, exhibit A2, a bunch of copies of no.3 Account of Adusumalli Village, reflect that the following extents of land are in the name of the pattadar, Yarlagadda Vasantha Kumari, who is the mother of the JDr.

Sl.No.	Survey No. & sub-division	Total Extent	Khata No.
1	50-3B	1.0600	530
2	50-3A	1.1600	530

In exhibits A1 and A2, in the relevant column, the source of acquisition of the above said lands is mentioned as 'ancestral'. Therefore, the evidence brought on record reveals that the family of the JDr is having ancestral lands and that the properties are mutated in the name of the mother of the JDr, after the death of the father of the JDr. Therefore, there is sufficient evidence to come to a safe conclusion that the JDr is having a share in the ancestral lands, which are mentioned above. Even according to the JDr, the lease amount payable per annum for one acre of agricultural land is Rs.25,000/- to Rs.30,000/-. Therefore, there is ample evidence to show that the JDr is the joint owner of the above said lands, which are income yielding lands of substantial value. Hence, this Court finds that his evidence that he lives on coolie work and he earns Rs.300/- per day and that the said income from coolie work is his only source of income cannot be countenanced. His admission in the cross-examination that he is educating his children in Universal Techno School in Inkollu by paying Rs.50,000/- per annum towards their school fee strengthens the view that the JDr is a person with sufficiently good financial resources and income. It is not his case that his mother is educating the children. His admission that his family succeeded to a Daba house bearing Door No.1-86/A also shows that he has got a share in the family house. Though at one stage of his evidence he had stated that he is residing in a house belonging to one Ravi Krishna Rao on payment of a monthly rent of Rs.300/-, he further admitted that he, his mother, wife and children are having Aadhar Cards and that the door number in all the Aadhar Cards is shown as Door no.1-86/A. His evidence, which is already referred to supra, thus brings to the fore that he is residing in Door No.1-86/A along with his mother and other family members and that

the very same door number is mentioned in the Aadhar cards issued to him, his mother and his wife and children. Therefore, his contention that he is residing in the house taken on lease from Ravi Venkata Krishna Rao also appears to be not correct. In any view of the matter, the said contention is not established by either producing a rent receipt or by examining the said person. Therefore, it can also safely be held that the JDr is having a share in the ancestral/family house, in which he is residing with his mother and his family. It is in evidence that the JDr is having an elder brother. In the evidence of the JDr, there is no mention of any other family member, who is entitled to a share in the ancestral properties of the family of the JDr.' Be that as it may.

5.(e) The JDr placed strong reliance on exhibits R1 & R2. Exhibit R2 shows that it was issued by the Tahsildar, Parchur Mandal, certifying that there are no landed properties of Adusumalli Village in the name of the JDr. The certificate does not signify that the JDr does not own any properties and it only indicates that there are no landed properties in the name of the JDr. The other certificate, exhibit R1 on a perusal shows that there are no records in the Gram Panchayat showing that he is paying any property tax or business licence fee or any tax on vacant land. The specific case of the DHr, which is sufficiently established by cogent evidence, is that the house property as well as the landed properties are ancestral properties of the family of the JDr and they are standing in the name of the mother of the JDr after the death of the father of the JDr. In that view of the matter, the two certificates relied upon by the JDr do not advance his case any further. A careful analysis of the entire evidence would lay bare that the JDr is having a share in two extents

of lands and a house referred to supra, which are substantial properties. The fact that the JDr has taken a false defence in respect of his properties and further deposed falsely that he has no properties, is factor, which by itself is also sufficient to hold that the JDr is wilfully not paying the decree debt with the object of wilfully delaying the payment of the just decree debt, with a view to defeat the just claim of the DHr.

6. Before parting, be it noted that the learned counsel for the revision petitioner/JDr placed reliance on a decision of the Supreme Court reported in **Jolly George Varghese and another v. The Bank of Cochin**¹ in support of the contentions that the arrest of the JDr cannot be ordered unless it is established that there is an element of bad faith beyond mere inability to pay; and that it is for the DHr to establish that the JDr has the ability to pay, but, he had improperly evaded or postponed doing so; and that the JDr is not liable for arrest, unless the said burden is discharged by the DHr. There is no dispute with the legal position obtaining.

7. In the case on hand, this Court based on the facts and evidence brought on record, already recorded a finding that the JDr is having a share in the ancestral lands and house and that he has the ability to pay; but, he had wilfully evaded to pay the decree debt in order to delay and defeat the just claim of the DHr. It is also pertinent to note that pursuant to the interim orders of this Court passed in this revision, the JDr had already paid 50% of the decree debt in one lump sum. It is not his case that the said amount is paid by his mother or other family members or that he had paid the said sum by taking amounts on loan from third parties. The fact

¹ AIR 1980 SC 470

that pursuant to the interim orders of this Court, he paid 50% of the decree debt, in one lump sum also supports the case of the decree holder that the JDr has sufficient financial resources of his own and that his economic condition is sound.

8. In the case on hand, the DHr is able to produce sufficient evidence regarding the properties and sources of income or means of the JDr that may normally be sufficient to come to the conclusion that since the date of decree, the JDr was and is having means to pay the amount of the decree or some substantial part thereof, but, he had refused or neglected to pay the same. The said evidence on the side of the DHr, which is of the required standard, in the absence of rebuttal evidence of reliable standard on the side of JDr, is sufficient to find that the DHr discharged the onus of proof as well as the legal burden.

9. This takes us to the last contention. As rightly pointed out by the learned counsel for the revision petitioner/JDr, the Court below, having passed orders directing for the arrest and detention of the JDr in the civil prison, had failed to specify the period for which the JDr is to be detained in the civil prison. On that score, it is sought to be contended that the order is illegal and is liable to be set aside. In support of the said contention, reliance is placed upon a decision of this Court reported in **T.Doraswamy Reddy v. K. Kodanda Naidu**². In the said decision, this Court, having noted that the I Additional District Munsif has not specified the period for which the JDr should be kept in detention, held that the order of the learned District Munsif is liable to be set aside for the said reason. No doubt, it is true that sub-Section (1) of Section 58 of the Code provides *inter*

² 1997 (2) ALD 190

alia that every person detained in the civil prison in execution of a decree shall be so detained “where the decree is for the payment of a sum of money exceeding one thousand rupees, for a period of *not exceeding* three months....”. It is also true that the said provision gives discretion to the Court to fix the period for which the JDr shall be detained in civil prison. Yet, in the considered view of this Court, for the reason that the Court below had failed to fix in the impugned order, the period for which the JDr shall be detained in civil prison, the impugned order does not warrant interference. Indeed, learned counsel for the respondent/DHr contended that it is also practice of some of the Judicial Officers to determine the period of detention only on the day the JDr is brought before the Court on due execution of the warrant of arrest. His submission is that, as is being done by some of the Courts, it is just and fair to hear the JDr on the period of detention before ordering committal of the JDr to civil prison, and then specify in the sequential committal orders, the period of detention to be undergone by the JDr as well as the amount to be paid by the DHr towards subsistence allowance. There is good enough force and acceptable merit in this contention. Accordingly, this Court finds that on the ground that the period of detention is not specified in the impugned order, the said order need not be set aside and that this revision petition can be disposed of with appropriate directions while confirming the impugned order for the reasons afore-stated.

10. Accordingly, and for the reasons above mentioned, the Civil Revision Petition is dismissed confirming the impugned order. However, taking into account the facts and circumstances of the case, the JDr is granted a time of eight (08) weeks from today to

deposit, into the Court below, the entire balance amount due under the Decree besides costs of Execution. Nonetheless, on the failure of the JDr to comply with the said direction, the Court below shall, in accordance with the procedure established by law, issue a warrant of arrest against the JDr, and shall pass an order, in exercise of its judicial discretion, directing the detention of the JDr in civil prison for a specified/fixed period by also directing the DHr to deposit into Court a reasonable sum towards subsistence allowance of the JDr covering the entire period of detention.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M. SEETHARAMA MURTI, J

29th August, 2018
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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**CIVIL REVISION PETITION No.2994 of 2018**29th August, 2018

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