

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4855 OF 2018

ORDER :

Order dated 30.06.2018 in E.P. No. 26 of 2013 in O.S. No.127 of 1999 on the file of the Principal Senior Civil Judge's Court at Ananthapuramu is under Revision.

Petitioner herein is the judgment debtor, who suffered decree for a sum of Rs. 1,69,000/- with future interest on Rs.1,00,000/- at 12% per annum *pendente lite* and at 6% per annum till the date of realization along with suit costs of Rs.11,881/-. The respondent – decree holder filed the E.P. seeking arrest of the petitioner on the ground that in spite of having sufficient means to pay the decretal amount, the latter has been avoiding and hence, he is required to be detained in civil prison. The Court below, after enquiry, had given a finding that the judgment debtor has means to discharge the liability, but however, failed to do so.

Learned counsel for the petitioner submits that the order under Revision is passed without giving proper opportunity to the petitioner to adduce evidence, though he filed a Petition to reopen the E.P. He further submits that yet another E.P. is not maintainable when the previous E.P. filed by the decree-holder was dismissed for default and that the Court below, having given a finding that the judgment debtor has movable and immovable properties, ought to have directed the decree-holder to take steps for recovery of the decretal amount in spite of ordering arrest of the petitioner.

Having perused the record, in the facts of the present case, as recorded by the Court below, which stood un-rebutted, the

Revision does not merit any consideration. The Court below had examined the petitioner as well as the respondent and marked Exs.A1 to A4. It was observed that on earlier occasion, E.P. No. 1 of 2014 came to be closed, on the ground that the respondent filed an Insolvency Petition which came to be dismissed and the Appeal preferred thereagainst was also dismissed on 16.09.2011. Once again, the present Execution Petition was filed on 17.11.2012 seeking arrest of the petitioner. Despite the same, the petitioner did not choose to make any payment. By marking Exs.A1 to A4, the respondent – decree holder had proved that the petitioner owns agricultural land to an extent of Ac.17.37 cents situated in Korlapadu Village of Bukkarayasamudram Mandal, Ananthapuramu District. Though there was denial on the part of the petitioner that the lands covered under Exs.A1 to A4 do not belong to him, the same was found to be not true on account of the evidence produced by the decree-holder. Yet another plea taken by the petitioner that on account of the drought conditions, no income was derived from the lands, was not established, since he has not examined any person from the agricultural department to prove the same and the said plea itself belies the very stand taken by him that he does not have any property covered under Exs.A1 to A4. The Court below also found that the petitioner borrowed the amount in 1997 and more than 20 years passed by and that the petitioner has been avoiding to make the payment. Even on that ground, the conduct of the petitioner can be found fault with. As stated supra, there being no other material to contradict the findings recorded by the Court below, the order under Revision does not warrant any interference in the hands of this Court in

exercise of the revisionary jurisdiction, under Section 115 of the Code of Civil Procedure.

The Civil Revision Petition is therefore, dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

02nd November 2018

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