

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1327 OF 2011

ORDER:

This civil revision petition is filed under Section 115 of C.P.C questioning the order in E.P.No.179 of 2010 in O.S.No.759 of 2002 dated 04.03.2011 passed by the III Additional Junior Civil Judge, Guntur.

E.P.No.179 of 2010 was filed under Order XXI Rule 37 & 38 C.P.C and the Court below ordered arrest of the petitioner/judgment debtor and to commit him to civil prison for realization of the decree debt. It is the case of the respondent/decree holder that the respondent filed O.S.No.759 of 2002 before the III Additional Junior Civil Judge, Guntur and obtained decree on 25.10.2002 for recovery for an amount of Rs.58,701/- with subsequent interest at 12% per annum on principal amount of Rs.34,000/- from the date of filing of the suit till the date of decree and at 6% per annum from the date of decree till realization and costs of the suit. Further, though the judgment debtor having sufficient means to pay the decree debt, he conveniently avoided to pay the decree debt.

The petitioner/judgment debtor filed counter before the Executing Court, denying material allegations, *inter alia* contending that he has no means to pay the decree debt, while contending that he filed an insolvency petition I.P.No43 of 2010 pending on the file of I Additional Senior Civil Judge, Guntur, to adjudge him as insolvent and the same is pending, therefore, he cannot be ordered to be arrested and committed to civil prison.

The Executing Court, upon conducting necessary enquires examined the decree holder as P.W.1 and got marked Ex.P-1, whereas,

the judgment debtor was examined as R.W.1, apart from examining R.W-2 who is an independent witness in support of his plea and concluded that the petitioner/judgment debtor possessed sufficient means to pay the decree debt and ordered for arrest of the judgment debtor and to commit him to civil prison for realization of the decree debt.

Aggrieved by the order passed by the Trial Court, the present civil revision petition is filed mainly on the ground that, when insolvency petition is pending before the competent court, arrest of judgment debtor is impermissible and that the judgment debtor has no sufficient means to pay the decree debt. But, it is contended that the Executing Court, recorded an erroneous finding and committed an error and finally prayed to set-aside the order in E.P.No.179 of 2010 in O.S.No.759 of 2002 dated 04.03.2011 passed by the III Additional Junior Civil Judge, Guntur.

During hearing, learned counsel for the petitioner/judgment debtor, while reiterating the contentions urged in the affidavit, would draw attention of this Court to **Clauses 3 & 4 of Section 55 C.P.C**, to contend that, when insolvency petition is filed and pending before the competent court, the petitioner cannot be ordered to be arrested and committed to civil prison for realization of decree debt.

Notice on the respondent/decree holder was served and proof of service was also filed, but none appeared on behalf of him.

It is an undisputed fact that the respondent/decree holder obtained a decree on 25.10.2002 for recovery for an amount of Rs.58,701/- with subsequent interest at 12% per annum on principal amount of Rs.34,000/- from the date of filing of the suit till the date of decree and at 6% per annum from the date of decree till realization and costs of the suit. It is also an admitted fact that the petitioner did not

discharge the specified decree debt. Therefore, the respondent/decreed holder filed E.P.No.179 of 2010 for realization of the decree debt under Order XXI Rule 37 & 38 C.P.C and the Court below ordered for arrest of the petitioner/judgment debtor to commit him to civil prison for realization of the decree debt and thus, the petitioner set up a plea of no means and filed an insolvency petition.

Clause (3) of Section 55 C.P.C specifies the procedure that where a judgment debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be adjudged as an insolvent and that he may be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

Similarly, Clause (4) of Section 55 C.P.C prescribed the procedure when the Judgment debtor was brought before the Court after amendment and compliance of Clause (3) referred above, where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest and if he fails so to apply and to appear, the Court may either direct the security to be realised or commit him to the civil prison in the execution of the decree.

Thus, the procedure under Sub-Section 3 & 4 of Section 55 C.P.C is applicable only when the judgment debtor is arrested in execution of a decree for the payment of money and produced before the Court in

execution of warrant issued under Order XXI Rules 37 & 38 C.P.C, the Court shall inform the judgment debtor his right to apply for adjudging him as insolvent under the provisions of Insolvency Act and that the judgment debtor may be released discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

Section 21 of The Provincial Insolvency Act, 1920, reads as follows:

21. Interim proceedings against debtor.—At the time of making an order admitting the petition or at any subsequent time before adjudication the Court may either of its own motion or on the application of any creditor make one or more of the following orders, namely:—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct, that in default of giving such security, he shall be detained in the civil prison;

(2) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908 (5 of 1908), or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

(3) order a warrant to issue with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary: Provided that an order under clause (2) or clause (3) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

- (i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or
- (ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to

conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Therefore, by invoking the jurisdiction under Section 21 of The Provincial Insolvency Act, the Court can grant interim protection to this petitioner during pendency of the insolvency proceedings. But, here, by the date, the judgment debtor filed counter before the Court below and also filed Insolvency Petition I.P.No.43 of 2017 and it is pending. But, no interim protection was obtained under Section 21 of The Provincial Insolvency Act, 1920, in strict compliance of Section 55(3) of C.P.C. But, mere filing of an insolvency petition, would not debar the Court from ordering arrest of the judgment debtor and unless an interim order of protection is granted to this petitioner/judgment debtor, the Court can proceed against the petitioner herein/judgment debtor to recover the decree amount under decree. Further, the procedure contemplated under Sections 3 & 4 of Section 55 is applicable only when the judgment debtor was produced after his arrest before the Court below to realize the decree debt due by expressing his intention to file insolvency petition within one month. But, in this case, by the date of filing execution petition, an insolvency petition is pending, filed by the judgment debtor, where the judgment debtor was arrayed as a creditor in the schedule of creditors. Therefore, Clauses 3 & 4 of Section 55 have no application to the present situation and unless, the petitioner obtains an interim protection, the executing court is not precluded from passing any order by exercising power under Order XXI Rule 37 & 38 C.P.C. Here, in this case, it is an admitted fact that the petitioner did not obtain any interim protection

under the provisions of The Provincial Insolvency Act. Therefore, the order passed by the Executing Court is free from any illegality and the petitioner is not entitled to claim exemption for arrest.

The present petition is filed under Section 115 C.P.C and this Court can exercise such power calling for records, either on an application or suo-moto, verify the orders passed by the Courts under its control and interfere with such orders if the Court finds that the subordinate courts exercised its jurisdiction, which is not vested with it or ought to have exercised the jurisdiction that is vested or exercise the jurisdiction illegally or irregularly.

in the present case, no such ground is urged which falls within Section 115 C.P.C to exercise reversionary jurisdiction against the order passed by the Court below. In the absence of such plea, in the entire revision, it is difficult to exercise such power and reverse the order passed by the Court below. Therefore, I find no ground to interfere with the order passed by the Court below. However, the petitioner is at liberty to approach the competent authority to obtain interim protection in the pending insolvency petition.

With the above observation, the present civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:07.03.2018

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