

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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

C.R.P.No.4949 of 2017

Date: 09.04.2018

Between:

Malla Sadasiva Rao, S/o.M.Ram Murthy,
Aged about 53 years, R/o.Reddika Veedhi,
Palasa Town and Post, Palasa mandal,
Srikakulam district ... Petitioner

And

M/s.Shriram City Union Finance Limited,
Palasa Branch, rep. by its Authority Division
Executive and Power of Attorney Holder
Ch.V.Ravi Shankar,
R/o.Kasibugga, ... Respondents
Srikakulam & 2 others

Counsel for the Petitioner : Ms.T.Radha Rani for
Mr. T.D.Phani Kumar

Counsel for the Respondents: Mr.Maheswara Rao Kuncheam
for respondent No.1

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This civil revision petition is filed by judgment debtor No.1 in E.P.No.63 of 2016 on the file of the Principal District Judge, Srikakulam, feeling aggrieved by order dated 02.08.2017 in E.P.No.63 of 2016 in A.O.P.No.649 of 2011.

2. The petitioner is the principal borrower from respondent No.1. As he failed to repay the debt, respondent No.1 has initiated arbitration proceedings, in which an arbitral award was passed for payment of Rs.3,68,553/- along with interest. As the petitioner failed to repay the amount under the award, respondent No.1 has filed the aforementioned E.P. under Order XXI Rules 37 and 38 of the Code of Civil Procedure, 1908, for the former's arrest. The said E.P. having been allowed by the lower court, the principal borrower has filed the present revision petition.

3. In support of its plea that the petitioner possessed means to repay the debt, respondent No.1 – decree holder, has examined its Legal Office Assistant Mr.Etcherla Laxmana Rao, as PW-1, who deposed that the petitioner is earning an income of Rs.25,000/- p.m., apart from his having movable and other properties, including gold worth Rs.5 lakhs. The petitioner who pleaded 'no means', has examined himself as RW-1. In his cross-examination, it was elicited that he did cashewnut business previously; that his wife was the proprietrix of M.R.M. Cashews and that, he did not file any

document to show that the said company was wound up. The petitioner has pleaded that he is suffering from hyper-tension and cancer. The court below however, held that no document was filed in support of the said plea. RW-2 who was examined as a witness on behalf of the petitioner, deposed that the petitioner is a sick person, suffering from cancer and that he had two sites in Palasa, which were already attached in several cases by courts and that, except the said properties, the petitioner does not have any other properties in his name.

4. Under the proviso to Section 51 of the Civil Procedure Code, 1908, where the decree is for payment of money, execution by detention in prison shall not be ordered unless, the court after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, and is *inter alia* satisfied that the judgment debtor has or has had since the date of decree, the means to pay the amounts of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

5. In the instant case, except pleading that the petitioner is having an income of Rs.25,000/-p.m., apart from having movable and other properties and also gold worth Rs.5 lakhs, no evidence whatsoever, was adduced by respondent No.1 in support of the said plea. Thus, respondent No.1 has not discharged the primary burden placed on it for seeking the arrest of the petitioner. The court below in our opinion, committed a serious error in drawing presumptions against

the petitioner, based on the deposition of RW-2, that the petitioner had two sites at Palasa, ignoring his immediately following statement that both the said sites were under attachments by courts, in connection with several cases. Since an order of arrest deprives a person of his personal liberty, such an order cannot be passed in a light-hearted manner by the courts, unless the decree holder produced satisfactory evidence that the judgment debtor is possessed of sufficient means, to be able to discharge the debt and that, in spite of the same, he has been neglecting the payment. As respondent No.1 failed to discharge this burden, the lower court has committed a patent error in allowing the E.P.

6. For the aforementioned reasons, the order under revision dated 02.08.2017 in E.P.No.63 of 2016 in A.O.P.No.649 of 2011 on the file of the Principal District Judge, Srikakulam, is set aside. This order, however, would not preclude respondent No.1 from filing a fresh E.P. with proper evidence of possession of means by the petitioner.

7. The Civil Revision Petition is, accordingly, allowed.

8. As a sequel, miscellaneous petitions if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(D.V.S.S.Somayajulu, J)

Date: 9th April, 2018

msb

