THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.No.7180 OF 2017

ORDER:

This civil revision petition is directed against the order dated 19.09.2017 in E.P.No.159 of 2007 in O.S.No.223 of 2012, on the file of the II-Additional District Judge, Warangal, wherein the said petition filed by the petitioner-decree holder under Section 5 of the Limitation Act read with Section 151 of the Civil Procedure Code (for short, 'CPC') for realization of decree amount of Rs.28,50,849/- by arrest and detention of JDr.Nos.3 and 5 in civil prison, was dismissed.

2. Heard learned counsel for the petitioner. None appeared for the respondent No.3. Perused the record.

3. The petitioner-decree holder filed E.P.No.159 of 2007 against the respondents/judgment debtors for realization of Rs.28,50,849/- under the decree in O.S.No.223 of 2002 by arrest and detention of judgment debtor Nos.3 and 5 in civil prison. Subsequently, notice was sent to JDrs.3 and 5 and it was reported that JDr.No.5 died. JDr.No.3 was brought under arrest and the executing Court caused enquiry about the means to satisfy the decretal amount. The trial

Court after following due procedure of law held that the revision petitioner failed to give any reasons for not proceeding against the properties of JDr.No.1 and 6 to 9 and it is not clear that the decree holder left the said judgment debtors and seeking arrest and detention of JDr.No.3 alone. With the said observations, the EP was dismissed. Challenging the order, the present revision is filed.

4. Learned counsel for the petitioner submits that the trial Court committed error in dismissing the EP without giving valid reasons and he prayed to set aside the impugned order.

5. The EP is filed for realization of an amount of Rs.28,50,849/- which is due under decree dated 07.11.2005 in O.S.No.223 of 2002 against JDrNos.3 and 5 by arrest and detention in civil prison for realization of the decretal amount. During the pendency of the proceedings, JDr.No.5 died. On 28.07.2009, JDr.No.3 was brought under arrest. The trial Court conducted enquiry as per the procedure and mainly considered whether JDr.No.3 can be sent to civil prison for non-payment of the decretal amount. The executing Court examined Assistant Manager of the decree holder and marked

Exs.A-1 to A-5 on behalf of the decree holder and R.W.1s to 4 were examined on behalf of JDr.No.3 and marked Exs.R-1 to R-11.

6. The executing Court in the order had examined the documents produced by the decree holder and judgment debtor in detail and after appreciation of the evidence on record gave findings to the effect as to why the decree holder has not proceeded against the properties of JDr.Nos.1, and 6 to 9. It was also observed that the decree holder left JDr.Nos.1, and 6 to 9 and sought arrest and detention of JDr.No.3 alone.

7. A perusal of the impugned order would disclose that the decree holder failed to give any valid reasons as to why they were specific in seeking arrest and detention of JDr.No.3 in civil prison for realization of decretal amount instead of proceeding against the properties of JDrs.1 and 6 to 9.

8. I do not find any irregularity or infirmity in the order of the Court below warranting interference by this Court in exercise of powers under Article 227 of the Constitution of India.

9. In the result, the civil revision petition is dismissed. There shall be no order as to costs.

10. Miscellaneous petitions, if any pending, stand closed.

A.SANTHOSH REDDY, J

27.02.2023
Lrkm