HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

CIVIL REVISION PETITION NO: 2239/2019

Between:

Pasam Lakshmi Narasaiah

..... PETITIONER

AND

Rayani Venkata Subrahmanyam

....RESPONDENT

DATE OF ORDER RESERVED : 31.07.2026

DATE OF ORDER PRONOUNCED : 30.10.2026

DATE OF ORDER UPLOADED : 30.10.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

1.	Whether Reporters of Local newspapers may be allowed to see the Order?	Yes/No
2.	Whether the copies of order may be marked to Law Reporters/Journals	Yes/No
3.	Whether Your Lordship wish to see the fair copy of the Order?	Yes/No

PURUSHOTTAM KUMAR CHINTALAPUDI, J

*** THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI**

CIVIL REVISION PETITION NO: 2239/2019

% 30.10.2026

Pasam Lakshmi Narasaiah

……petitioner

And:

$ Rayani Venkata Subrahmanyam

…. respondent

!Counsel for the petitioner : Sri Kaleemulla S

^Counsel for the respondent : Sri V. Nitesh

<Gist:

>Head Note:

? Cases referred:

1. 2017 SCC OnLine Mad 8254
2. (1980) 2 SCC 360; AIR 1980 SC 470
3. 1997 (6) ALT 730; (1998) 1 APLJ 87
4. AIR 2004 AP 435
5. AIR 2008 (NOC) 1945 (AP)
6. 2019 (4) ALD 104
7. C.R.P.No.2987 of 2007, dated 26.12.2014
8. C.R.P.No.904 of 2023, dated 27.12.2024

Date of reserved for orders : 31.07.2026
Date of pronouncement : 30.10.2026
Date of uploading : 30.10.2026

APHC010241392019

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3606]**
(Special Original Jurisdiction)

FRIDAY, THE 30th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

CIVIL REVISION PETITION NO: 2239/2019

Between:

1. PASAM LAKSHMI NARASAIAH, S/O PEDDA NARASIMHULU, AGED ABOUT 49 YEARS, HINDU, R/O FLAT NO. 201-C, DHARA APARTMENTS, MYDUKUR ROAD, PRODDATUR, YSR KADAPA DIST.,

...PETITIONER

AND

1. RAYANI VENKATA SUBRAHMANYAM, S/O ANJANEYULU, AGED ABOUT 52 YEARS, HINDU, R/O D.NO. 10/55, SARVAKATTA STREET, PRADDATUR, YSR KADAPA DIST.,

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to Memorandum of Civil Revision Petition against the Order dated 26.04.2019 passed in E.P.NO.41/2018 in O.S.NO.218/2015 on the file of Principal Junior Civil Judges Court, Proddatur.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

To grant stay of issuance of arrest warrant against the petitioner and its execution against the petitioner in E.P.NO.41/2018 in O.S.NO.218/2015 on the file of Principal Junior Civil Judges Court, Proddatur.

IA NO: 2 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to order substituted service of notice in the above service of notice in the above CRP to Respondent through the publication of notice in Proddatur Town edition of Prajashakthi Telugu Daily and to pass.

Counsel for the Petitioner:

1. KALEEMULLA S

Counsel for the Respondent:

1. V NITESH

The Court made the following:

THE HONOURABLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

CIVIL REVISION PETITION NO: 2239/2019

ORDER:

The present revision is directed against the order dated 26.04.2019 passed in E.P.No.41 of 2018 in O.S.No.218 of 2015 on the file of the learned Principal Civil Judge (Junior Division), Proddatur.

2. The decree-holder (D.Hr.) filed E.P.No.41 of 2018 against the judgment-debtor (J.Dr.) seeking execution of the decree by way of civil arrest under Order XXI, Rules 37 and 38 of the Code of Civil Procedure, 1908 (for short, "CPC"). By the impugned order, the learned Judge allowed the execution petition and directed the issue of an arrest warrant against the J.Dr. on payment of process.

3. Aggrieved by the impugned order, the J.Dr. has preferred the present revision. The respondent herein is the D.Hr. in the execution petition.

4. Heard Sri S. Kaleemullah, learned counsel for the petitioner, and Sri V. Nitesh, learned counsel for the respondent.

5. For convenience, the parties are referred to as arrayed in the execution petition before the trial Court.

Factual Matrix:

6. The respondent/D.Hr. instituted O.S.No.218 of 2015 for recovery of money. The suit was decreed against the J.Dr. on 31.03.2017. Thereafter, the respondent initiated execution proceedings in E.P.No.41 of 2018, seeking the following mode of execution:

> "……to Issue notice to the J.Dr (Petitioner herein) under Order 21, Rule 37 of the Code of Civil Procedure and thereon arrest the J.Dr in the event of failure to pay the Decree amount under Order 21, Rule 37 Rule 38 C.P.C…."

7. In the affidavit filed in support of the execution petition, the D.Hr. stated that the J.Dr. had sufficient means to pay the entire decretal amount at once because he was carrying on business, possessed movable assets such as gold and cash, and was earning sufficient income from a finance business. The D.Hr. alleged that the J.Dr. was wilfully avoiding payment and sought his arrest.

8. After receiving notice, the J.Dr. filed a counter opposing the relief. He denied having sufficient means or possessing gold and cash, and denied intentionally failing to pay the decretal amount. He also contended that the D.Hr. had not complied with Order XXI, Rule 22(1) CPC. The J.Dr. stated that he had carried on business but suffered heavy losses, and that several persons, including the D.Hr.'s brother, owed him money. He had instituted O.S.No.426 of 2015 on the file of the learned Senior Civil Judge, Proddatur, for recovery of money, in which the D.Hr.'s brother was the defendant. The J.Dr. further stated that the suit was contested by a written statement, that he was unable to pay any amount, and that he had preferred an appeal against the decree before the District Court, Kadapa at Proddatur. He sought a stay of the execution proceedings pending disposal of the appeal and dismissal of the execution petition.

9. The learned Judge conducted an enquiry. The D.Hr. was examined as PW1, but no documents were marked on his behalf. The J.Dr. was examined as RW1, and no documents were marked on his behalf either.

10. After considering the D.Hr.'s affidavit, the J.Dr.'s counter and the evidence adduced by both parties, the learned Judge allowed the execution petition and ordered the issue of a warrant against the J.Dr.

11. The J.Dr. has challenged the impugned order in this revision under Article 227 of the Constitution of India.

Arguments:

12. Sri S. Kaleemullah, learned counsel for the petitioner/J.Dr., argued that the learned Judge failed to appreciate that the J.Dr. lacked sufficient means to satisfy the decree. The impugned order does not assign specific reasons for issuing the arrest warrant and is contrary to settled principles of law. Although the petitioner had carried on business earlier, he had suffered substantial losses and, as on the relevant date, had no means to satisfy the decree.

13. Learned counsel relied on **T.Dharmalingam v. K.P.Bharathi and others**[1], and submitted that the learned Judge ought to have followed the procedure under Order XXI, Rules 39 and 40 CPC before ordering arrest under Rule 37. According to counsel, the D.Hr. ought first to have sought attachment and could not directly seek arrest under Order XXI, Rules 37 and 38 CPC. Civil arrest, counsel submitted, is a last resort, and the learned Judge issued the warrant without following the prescribed procedure.

14. Learned counsel for the J.Dr. also relied on (i) **Jolly George Varghese v. Bank of Cochin**[2], (ii) **C.A. Sattar v. L.C. Ayub**[3], (iii) **K. Vijayakumar v. N. Gururaja Rao**[4], (iv) **Seelam Ramadevi v. Gadiraju Yanadi Raju**[5], and (v) **Korada Narayana Rao v. Kudara Mutyalu**[6]. Relying particularly on **Jolly George Varghese** (cited supra), and submitted that issuing an arrest warrant without following due process affects the rights guaranteed under Article 21 of the Constitution of India and Article 11 of the International Covenant on Civil and Political Rights. The Court have to find bad faith beyond mere indifference to payment, a deliberate refusal in the past, or the judgment-debtor's present means to pay the decree or a substantial part of it. Mere non-payment is insufficient; the Court have to consider whether the judgment-debtor has

[1] 2017 SCC OnLine Mad 8254
[2](1980) 2 SCC 360; AIR 1980 SC 470
[3]1997 (6) ALT 730; (1998) 1 APLJ 87
[4]AIR 2004 AP 435
[5]AIR 2008 (NOC) 1945 (AP)
[6]2019 (4) ALD 104

refused to pay despite having the means. Without a finding that the J.Dr. has sufficient means, a warrant cannot be issued.

15. Learned counsel further submitted that the learned Judge did not record a finding that the J.Dr. had sufficient means. The D.Hr. bears the burden of establishing the J.Dr.'s means and wilful disobedience of the decree in bad faith. The J.Dr. had suffered substantial business losses and the fact that he had carried on business in the past does not establish his present ability to pay. He was also awaiting payment of amounts due from others. Counsel contended that the learned Judge had not considered the prescribed procedure or whether other modes of execution should be pursued before ordering civil arrest. On these grounds, he sought to set aside the order dated 26.04.2019.

16. In reply, learned counsel for the D.Hr. submitted that the learned Judge had recorded a reasoned finding. He drew attention to the J.Dr.'s evidence as RW1, in which the J.Dr. admitted that he had carried on business under the name "Akhira Pharmaceutical Company" at Hyderabad. The company manufactured 60 to 70 products, which were supplied through distributors at Narasaraopet and Proddatur. Its annual turnover was approximately Rs.40,00,000 to Rs.50,00,000. Counsel also referred to the evidence concerning land held by the J.Dr.'s mother and the pension received by him from his father, and submitted that the J.Dr. held a PAN card and was an income-tax assessee.

17. Learned counsel submitted that the learned Judge had considered the J.Dr.'s admissions regarding his occupation and income and had rightly concluded that, despite having sufficient means, he deliberately failed to pay the decretal amount. He therefore sought dismissal of the revision and confirmation of the impugned order.

18. I have heard learned counsels and have gone through the record.

19. Learned counsel for the D.Hr. also relied on orders passed by a co-ordinate Bench of this Court in **M/s. Mita Cars Pvt. Limited, represented by its Managing Director, and Sri Rathin M. Mehta v. M/s. Honda Siel Cars (India) Ltd., Office and Factor**[7] and **Mungara Vijayabhaskar Reddy v. Gummadi Stalin Babu and Others**[8]. In C.R.P.No.2987 of 2007, this Court dismissed a revision filed by a judgment-debtor against an order relating to civil arrest. The Court observed that, once the D.Hr. makes a *prima facie* assertion that the J.Dr. has sufficient means, the burden under Section 106 of the Indian Evidence Act, 1872, shifts to the J.Dr. to explain matters within his knowledge. Counsel submitted that RW1's evidence showed the J.Dr.'s occupation and capacity to earn. He further pointed out that, while granting stay in the present revision, this Court directed the J.Dr. to deposit one-fourth of the decretal amount, and the J.Dr. complied. According to counsel, that deposit demonstrated the J.Dr.'s ability to pay. Counsel relied on the order in **Mungara Vijayabhaskar (supra)**, in which the Court treated compliance with a similar deposit direction as relevant to the plea of insufficient means and permitted payment in instalments before ordering arrest. He submitted that the deposit in the present case likewise showed that the J.Dr. had sufficient means but was wilfully avoiding payment, and sought dismissal of the revision.

Discussion:

20. The learned Judge ordered the issue of an arrest warrant on the ground that the revision petitioner had sufficient means but was wilfully refusing to pay the decretal amount. The question is whether the record supports that conclusion and whether the procedure prescribed by law was followed.

21. The D.Hr. obtained a decree for recovery of money against the J.Dr., and the decree is not varied or set aside. The J.Dr.'s counter before the trial Court refers to an appeal against the decree. However, neither the appeal

[7] C.R.P.No.2987 of 2007, decided on 26.12.2014 (High Court of Judicature at Hyderabad).
[8] C.R.P.No.904 of 2023, dated 27.12.2024

number nor its present status has been furnished to this Court. The submissions made before this Court on the status of the appeal are also inconsistent. The trial Court did not refer to the appeal. In the absence of material showing that the decree has been stayed, varied or set aside, this Court proceeds on the basis of the record available.

22. As the decree remains in force, the D.Hr. is entitled to execute it in accordance with law. The D.Hr. sought execution by arrest, and the trial Court issued notice to the J.Dr. to show cause why he should not be arrested. Both parties accept that the learned Judge conducted an enquiry and gave them an opportunity to adduce evidence. The execution petition sought notice under Order XXI, Rule 37 CPC and, upon failure to pay the decretal amount, arrest under Order XXI, Rules 37 and 38 CPC.

23. The relevant provisions for considering the relief sought are Section 51 and Order XXI, Rules 22, 37, 38, 39 and 40 CPC.

Section 51 of CPC, Order XXI Rules 22, 37, 38, 39 and 40 of CPC.

24. Section 51 CPC prescribes the modes of execution and is extracted below:

> "51. **Powers of Court to enforce execution**.—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—
>
> (a) by delivery of any property specifically decreed;
>
> (b) by attachment and sale or by the sale without attachment of any property;
>
> (c) by arrest and detention in prison 3[for such period not exceeding the period specified in section 58,where arrest and detention is permissible under that section];
>
> (d) by appointing a receiver; or
>
> (e) in such other manner as the nature of the relief granted may require:
>
> [Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of

> showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—
>
> (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
>
> (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
>
> (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
>
> (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
>
> (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.
>
> Explanation. —In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."

25. Section 51 CPC permits execution by arrest and detention in prison, subject to the statutory conditions. Where the decree directs payment of money, the Court cannot order detention unless it gives the J.Dr. an opportunity to show cause and records its reasons in writing. The Court have to be satisfied that one of the conditions in the proviso is established, including that the J.Dr. has or has had, since the date of the decree, the means to pay the decree or a substantial part of it and has refused or neglected to do so. The Court have to carefully examine the J.Dr.'s means and the material relied on to establish obstruction, delay or bad faith.

26. In **Jolly George Varghese** (cited supra), the Hon'ble Supreme Court considered Section 51 CPC and explained the relevance of bad faith, including dishonest transfer or concealment of property.

Order XXI Rule 37 reads as follows:

37. Discretionary power to permit judgment debtor to show cause against detention in prison.

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment- debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

Order XXI, Rule 38 reads as follows:

38. Warrant for arrest to direct judgment-debtor to be brought up.

Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

27. Order XXI, Rule 37 CPC provides for notice calling upon the J.Dr. to appear and show cause why he should not be committed to civil prison. Rule 38 governs the warrant for arrest and requires the officer executing it to bring the J.Dr. before the Court. Thus, Rule 37 contemplates notice and an opportunity to show cause, while Rule 38 deals with the warrant to secure the J.Dr.'s appearance. The Court have to assess the J.Dr.'s means in accordance with law before proceeding further. Rule 39 also requires payment into Court of the prescribed subsistence allowance before arrest. In the present case, the learned Judge issued notice under Rule 37, the petitioner appeared, and both parties adduced evidence. The D.Hr.'s evidence, however, did not include documentary proof of his assertions concerning the J.Dr.'s property or business.

28. Neither party produced documentary evidence to support their respective versions. After recording their evidence, the learned Judge referred in paragraph 7 of the impugned order to the J.Dr.'s evidence, as extracted below:

> "07. On the other hand the Rw1/J.Dr categorically admitted that he maintained one Akhira Pharmacital company at Hyderabad and the above said company nearly 60 to 70 tablets of items were prepared and they supplied to Narsaraopet and Proddatur and also having distributors at Narsaraopet and Proddatur also. The Drugs Inspectors also filed cases against the J.Dr as well as concerned distributors at Vijayawada, Kandurutanuku, Kamareddy, Kurnool, Kadapa, Nellore and Proddatur and the same were pending. Further the J.Dr categorically admitted that the turnover of from his company near Rs.40 Lakhs to Rs.50 Lakhs per year and Ac.4-00 of land stands in fathers name of J.Dr but the J.Dr categorically further admitted that he is an income tax accessee which clearly established that the J.Dr is having sufficient means to pay the decree amount since he regularly paying the income tax.
>
> 08. In view of admissions made by the J.Dr which clearly established and shows that the J.Dr is having sufficient means to pay the decree amount but he intentionally evading the same.
>
> 09. In view of the same, I am inclined to allow the petition.
>
> 10. In the result, petition is allowed as prayed for. Issue arrest warrant against the J.Dr on payment of process."

29. The learned Judge extracted the deposition of RW1, the impugned order does not adequately explain how that evidence established the J.Dr.'s means at the relevant time. The deposition indicates that the evidence concerned the J.Dr.'s business during an earlier period. The learned Judge did not consider the J.Dr.'s statement that Akhira Pharmaceuticals had closed in 2012. Although a suggestion was put to him that the company had not closed, he denied it. The J.Dr. admitted that he was an income-tax assessee but did not produce income-tax returns. The D.Hr. did not take steps to obtain them. Under **Jolly George Varghese** (cited supra), the Court have to determine whether the conditions in Section 51 CPC are satisfied before

ordering civil detention. The D.Hr.'s execution affidavit and chief-examination affidavit contain no adequate particulars establishing the J.Dr.'s means or the other statutory conditions.

30. Clause (a)(ii) of the proviso to Section 51 CPC concerns dishonest transfer, concealment or removal of property, or another act of bad faith in relation to property, after institution of the suit/the decree. The D.Hr.'s affidavit does not make such an assertion. It states only that the J.Dr. had sufficient means because he carried on business and possessed movable property and cash. That assertion, without supporting material, does not discharge the D.Hr.'s burden. If the D.Hr. knew that the J.Dr. was carrying on business and was an income-tax assessee, he could have produced relevant documents or sought production of the income-tax returns. He took no such steps. Paragraph 3 of the D.Hr.'s chief affidavit states as follows:

> "It is further submitted that, if the Hon'ble Court is pleased to order for arrest of the respondent, then the respondent certainly will pay the entire petition claim at once. The respondent has filed his counter stating that, the respondent has no means to pay the decretal amount. The respondent though having sufficient he has no means to pay the decree amount. The respondent is having immovable means and having capacity to pay the decretal amount at once false pleaded that properties on his own and he kept some of the properties in the name of his wife and relatives in order to evade the amounts to the creditors. Hence the pleadings taken by the respondent in the petition is not maintainable. The respondent also took plea that, notice under Order 21 Rule 22(1) not complied. The above notice will be sent after 2 years of the decree only and within below two years of the decree. The respondent took such untenable pleas to evade the decree amount only."

31. This Court cannot accept the above statement as sufficient proof under law. As held in **Jolly George Varghese** (cited supra), civil arrest is a measure of last resort and engages the personal liberty guaranteed by Article 21 of the Constitution of India. Unless the statutory conditions are satisfied, civil arrest

cannot be used merely as a means of coercing the J.Dr. into paying the decretal amount.

32. In **State Bank of India v. Indexport Registered and others**[9], the Hon'ble Supreme Court held that a decree-holder may choose any mode of execution available under Section 51 CPC, including attachment or arrest. However, an application seeking arrest under Order XXI, Rules 37 and 38 CPC have to be supported by material establishing the judgment-debtor's sufficient means and the statutory basis for arrest. Although RW1 stated that the company's annual turnover was Rs.40 lakh to Rs.50 lakh, his further statement that the business had ceased and had suffered losses required consideration of relevant evidence, coupled with intention of the J.Dr. under Sec. 51 Proviso a (i to iii) of the Code. Court has to see that after institution of the suit or that since the decree; the J.Dr. to defraud the decree has shown losses to his business, and thus say that has no income or sufficient means to pay the decree. In a business, profits & losses do come. That does not mean, the person do not have capacity to earn means. Intention to avoid decree by taking shelter on loss of business is the relevant aspect to look into. The D.Hr./J.Dr. did not produce evidence to that claim.

33. Under clause (b) of the proviso to Section 51 CPC, the relevant question is whether the J.Dr. has, or has had since the date of the decree, the means to pay the decretal amount or a substantial part of it. The evidence and findings recorded by the learned Judge do not establish that the J.Dr. had sufficient means when the decree was passed on 31.03.2017. The J.Dr. stated that his business had closed in 2012. The suit was instituted in 2015, and the decree was passed in 2017. The D.Hr.'s suggestion that the business had not closed, without supporting evidence, does not discharge his burden. The fact that the J.Dr.'s mother owns four acres of land or receives a pension does not, by itself, establish that those assets or that income belong to the

[9] (1992) 3 Supreme Court Cases 159

J.Dr. There is also no evidence that the property of either parent was transferred to him.

34. The Explanation to Section 51 CPC requires the Court, when calculating the J.Dr.'s means for the purpose of clause (b), to exclude property exempt from attachment under any applicable law or custom.

35. The Explanation directs the Court to leave out of account, while calculating the J.Dr.'s means under clause (b), property that is exempt from attachment under an applicable law or custom having the force of law.

36. In the present case, the court ought to see, that the properties and pension referred to by the D.Hr. belong to the J.Dr.

37. The properties referred to by the D.Hr. belong to the J.Dr.'s parents, and the evidence concerning the pension is not clear as to its recipient or ownership. In the absence of evidence that these assets or income belong to the J.Dr., they cannot be treated as his means. During cross-examination, suggestions were put to RW1 that he earned Rs.2,00,000 to Rs.3,00,000 per annum or Rs.50,000 to Rs.1,00,000 per month. Those suggestions were not supported by documentary evidence or by specific pleadings in the execution petition or the D.Hr.'s chief affidavit. This Court, while exercising jurisdiction under Article 227 of the Constitution of India, does not re-appreciate evidence as an appellate Court would; it examines whether the impugned order suffers from illegality, material irregularity or jurisdictional error. The impugned order contains no reasoned finding that the J.Dr. had sufficient means since the date of the decree, obstructed or delayed execution, was likely to abscond, dishonestly transferred property, or refused or neglected to pay despite having the means.

38. The J.Dr.'s admission that he had carried on business, by itself, does not establish that he had sufficient means to pay the decretal amount. Order

XXI, Rule 38 CPC provides for a warrant directing the officer executing it to bring the J.Dr. before the Court; it does not, by itself, authorise detention without compliance with the further procedure. Rule 39 requires the D.Hr., before arrest, to pay into Court the prescribed sum towards the J.Dr.'s subsistence allowance from the time of arrest until he is brought before the Court. In the present case, the learned Judge directed payment of process. That direction appears to concern the process fee and does not, without more, establish compliance with Rule 39.

39. It is relevant to consider **T. Dharmalingam** (cited supra), relied on by learned counsel for the J.Dr. The direction to pay process fee cannot, by itself, be equated with payment of the subsistence allowance contemplated by Order XXI, Rule 39(1) CPC. The present record does not show that the J.Dr. was arrested and produced before the Court under Rule 38 or that the procedure thereafter was completed. The decision in **T. Dharmalingam** (cited supra), arose in a different procedural context: the J.Dr. therein denied having the means to pay and the trial Court issued a warrant requiring him to explain his means. In the present case, the J.Dr. appeared, filed a counter and adduced evidence during an enquiry. The impugned order was passed at the conclusion of that enquiry. For these reasons, the said decision is distinguishable on its facts.

40. **Jolly George Varghese** (cited supra) is relevant to the question of the J.Dr.'s means. The relevant passage is extracted below:

> "The simple default to discharge is not enough. There have to be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced

> law with justice, harmonised S. 51 with the Covenant and the Constitution."

41. The principle laid down by the Hon'ble Supreme Court is that mere default in payment is insufficient; the Court have to examine whether the J.Dr. had the means to pay and whether the failure to pay reflects a deliberate refusal or bad faith. In the present case, the D.Hr.'s execution affidavit and chief affidavit do not set out specific particulars of the J.Dr.'s occupation, income or property. The D.Hr. cannot rely solely on the J.Dr.'s evidence to fill that gap. The D.Hr. have to establish the statutory conditions under Section 51 CPC by placing sufficient material before the Court. No such material was produced here.

42. In **C.A. Sattar** (cited supra), the Court directed the executing Court to examine the J.Dr. in accordance with Order XXI, Rule 40 CPC. The relevant provision is reproduced below:

> "**40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.—**(1)When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.
>
> (2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.
>
> (3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:
>
> Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of

> an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.
>
> (4) A judgment-debtor released under this rule may be re-arrested.
>
> (5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.]"

43. In the present case, the J.Dr. has not been brought before the Court following arrest under Rule 38 CPC. The executing Court have to nevertheless follow the procedure prescribed by law. If **C.A. Sattar** (cited supra) applies, the appropriate course would be to direct the learned Judge to proceed in accordance with Order XXI, Rule 40 CPC.

44. In **K. Vijayakumar** (cited supra), relied on by the J.Dr., paragraphs 16 to 21 are relevant and are reproduced below:

> "16. A Division Bench of this Court in Sastry v. Bank of India, 1978 (2) APLJ 335, Order 21, Rule 37 was elaborately dealt with and observed as under:
>
> "What is therefore manifest from the foregoing provisions of law is--
>
> (1) The Court has power conferred upon it under Section 51 of the code to order the execution of a decree for the payment of money by arrest and detention of the judgment-debtor in prison on the application of a decree-holder;
>
> (2) The condition precedent for the exercise of that power is that it should be prescribed by the Court's affording an opportunity to the judgment-debtor of showing cause as to why he should not be committed to civil prison;
>
> (3) The Court should be satisfied, for reasons to be recorded in writing that the judgment-debtor has or has had, since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and that the judgment-debtor has refused or neglected to pay the same;

(4) The Court shall, instead of issuing a warrant for the arrest of the judgment-debtor, shall have to issue notice calling upon the judgment-debtor to appear before the Court and show-cause why he should not be committed to the civil prison;

(5) Where no such appearance is made in obedience to the notice and if the decree-holder so requires, it is rendered obligatory on the part of the Court to issue a warrant for the arrest of the judgment-debtor."

17. From the above, it could be seen that it was specifically pointed out that the executing Court should be satisfied that since the date of the decree, the judgment-debtor in spite of having substantial means has refused or neglected to pay the same, an order of arrest can be ordered.

18. The above aspect was more analytically discussed by the Supreme Court in Jolly George's case (supra). Reiteration of the same is not necessary inasmuch as the same was extracted in Kalindindi Rama Raju's case (supra).

19. Hence, having regard to the judgments, referred to supra, the learned Judge of this Court in Kalindindi Rama Raju 's case (supra) formulated the principles, for ready reference, which are as under:

"(1) Passing cryptic orders not based on reasons have to be avoided.

(2) Courts are expected to be cautious while making order of arrest in execution of decree since it involves personal liberty.

(3) Proper opportunity has to be given and necessary enquiry has to be made while making an order of arrest.

(4) Courts may also examine whether other modes of recovery are available to the decree-holder and is it necessary to order arrest for recovery of the amount and whether judgment-debtors are wilfully and intentionally neglecting to discharge the decree debts and Courts may examine the relevant circumstances also in this regard.

(5) Even while making an order of arrest in default of appearance of the judgment-debtors, Courts have to prima facie satisfy themselves on the material placed before them that an order of arrest can be made.

(6) Courts shall also fix the period for which the judgment-debtors are to be kept in detention."

> 20. Though the learned Judge of this Court with all modesty expressed that the said guidelines are only illustrative but not exhaustive, I am of the view that the above guidelines are not only illustrative but also near exhaustive.
>
> 21. From the above, it is clear that the executing Court has the power to execute the decree in any of the methods, as mentioned in Section 51 of the Code of Civil Procedure."

45. The above observations emphasise that the executing Court have to avoid cryptic orders and comply with Section 51 CPC. It have to record reasons for its satisfaction that the statutory conditions for arrest are met. In the present case, the learned Judge appears to have inferred sufficient means solely from the J.Dr.'s statement about his business, without adequately addressing the D.Hr.'s burden of proof. In **C.A. Sattar** (cited supra), the order was set aside, but the Court noted that the J.Dr. had deposited Rs.16,000 pursuant to an interim order and permitted the D.Hr. to withdraw that amount without security. The Court also directed consideration of other modes of recovery. The decision therefore does not support an unconditional order of arrest in the present case.

46. Learned counsel for the J.Dr. relied on **Seelam Ramadevi** (cited supra), in which this Court considered Order XX, Rule 11 CPC. The Co-ordinate Bench given directions to the trial Court that, in case any application for instalments was made, then the same can be considered. In those circumstances, the orders are passed. However, the provision relied upon is reproduced hereunder:

> "**Order XX Rule 11 CPC — Decree may direct payment by instalments**:
>
> "11. **Decree may direct payment by installments** (1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an Order that payment of the amount decreed shall be postponed or shall be made by

> installments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
>
> (2) Order, after decree, for payment by installments - After the passing of any such decree the court may, on the application of the judgment debtor and with the consent of the decree holder, Order that payment of the amount decreed shall be postponed or shall be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit."

47. The decision explains that, in a money suit, the Court may provide for payment by instalments when passing the decree and, in the circumstances contemplated by the provision, may subsequently order instalments on the judgment-debtor's application with the decree-holder's consent. The J.Dr. has expressed willingness to pay in instalments and has deposited one-fourth of the decretal amount pursuant to this Court's interim order. This decision by its own do not support J.Dr. that he is not liable under decree. His liability exists. He cannot be exempted from the execution of the decree.

48. **Korada Narayana Rao** (cited supra), the other decision relied on by the J.Dr., indicates that relief under Order XXI, Rules 37 and 38 CPC cannot be granted in the absence of material establishing the J.Dr.'s income. In the present case, although the J.Dr. gave evidence about his former business, neither party produced documentary evidence establishing his income at the relevant time.

49. The material on record, the reasoning in the impugned order, the authorities cited by both parties and the interim order of this Court dated 09.08.2019 are summarized as follows:

> i. The D.Hr. did not specify in his affidavit or examination-in-chief the material facts establishing the J.Dr.'s means.
>
> ii. An assertion in the execution petition that the J.Dr. was carrying on business does not, without supporting material, establish sufficient means, especially the intention of the JDr is to

mentioned, since the date of decree, JDr to avoid the decree has transferred the property, or moving out of jurisdiction.

iii. The Court have to apply Section 51 CPC before ordering execution by arrest, that to the intention of JDR. It is not the case that, the from the date of decree, the JDR has shown loss of business, to avoid the decree. It is not the case the JDR is moving out of the jurisdiction of the court. The D.Hr. did not place sufficient material to establish the statutory conditions.

iv. The statement in the D.Hr.'s affidavit that the J.Dr. would pay the entire decretal amount if an arrest order were passed does not establish the conditions prescribed by Section 51 CPC.

v. The D.Hr. has to place sufficient material regarding the J.Dr.'s means and establish, that since the date of decree, having sufficient means, the JDR has willfully refused to pay the decretal amount.

vi. The J.Dr. stated in his counter and evidence that he had carried on business which was later closed. He also admitted that the business had an annual turnover of Rs.40 lakh to Rs.50 lakh and that he was an income-tax assessee. This has to be tested as on the date of decree, that, with bad faith, is he placing such defence.

vii. Although the J.Dr. stated that his business had closed in 2012, he did not produce documents concerning the closure or his means of income at the relevant time. Court has to see that, that assertion of J.Dr. given any bad faith to avoid decree. As a businessman it cannot be said he has no intention to have means and from the institution of the suit he has no means.

viii. Before the decree was passed, the J.Dr. had instituted a suit against the D.Hr.'s brother. The institution of that suit may indicate that the J.Dr. paid court fee, but it does not, by itself, establish that he had sufficient means on the date of the decree.

> ix. The reference as to the land and pension belonging to the J.Dr.'s mother could be treated as the J.Dr.'s income or means, has to be applied in lines with the above provisions.

50. The learned Judge directed the issue of a warrant on payment of process but did not clearly direct the officer executing the warrant to arrest the J.Dr. and produce him before the Court in accordance with Order XXI, Rule 38 CPC. The impugned order does not demonstrate compliance with the statutory requirements governing a measure that affects personal liberty under Article 21 of the Constitution of India.

51. For the reasons stated above, the impugned order do not be sustain. The Court has to consider the requirements of Section 51 and Order XXI, Rules 37 to 40 CPC, together with Article 21 of the Constitution of India and Article 11 of the International Covenant on Civil and Political Rights. The decisions in **K. Vijayakumar, Seelam Ramadevi** (cited supra), and **C.A. Sattar** (cited supra), refer, respectively, the need for a reasoned order, the scope for payment by instalments, and the procedure under Rule 40.

52. It is reported by the learned counsels, the J.Dr.has complied the directions of this Court while granting stay that, J.Dr. deposited 1/4th of the decretal.

53. The interim order passed by this Court dated 09.08.2019 is as follows:

> "…. There shall be interim stay of issuance of arrest warrant against the petitioner and its execution pursuant to the order dated 26.04.2019 passed in E.P.No.41 of 2018 in O.S.No.218 of 2015 by the Principal Junior Civil Judge, Proddatur, on condition that the petitioner shall deposit 1/4th of E.P. amount together with costs, within a period of six (6) weeks from today."

54. D.Hr. relied on **Mungara Vijayabhaskar (supra)** in C.R.P.No.904 of 2023, dated 27.12.2024 where Co-ordinate Bench of this Court has observed,

when interim order is complied with by depositing part amount, then J.Dr. has no means cannot be accepted. The order speaks instalments are permitted, the order is as follows:

> "Therefore, this Court does not find any merit in the Revision and the same is liable to be dismissed. Further, as the issue pertains to the life and liberty of the Petitioners, the Petitioners shall pay 25% of the balance amount within a period of two (2) months from today and rest of the 50% should be paid within six (6) months thereof. The amount deposited by the Petitioners pursuant to the impugned order is permitted to be withdrawn. In the event of default by the Petitioners not paying the amounts as directed above, the order of the trial Court shall stand revived without further reference to this Court."

55. The submission of learned counsel for J.Dr., with the strength of **Seelam**'s case (cited supra), and that of the D.Hr., and the orders in **Mungara Vijayabhaskar** (cited supra) in C.R.P.No.904 of 2023, dated 27.12.2024, would show that the deposited amount can be withdrawn by D.Hr. and J.Dr. can be directed to pay the balance decretal amount in phased manner.

Conclusion:

56. With the above discussion, I am of the view that the impugned order requires reconsideration by the trial Court under the above provision. In view of the above rulings, in the interregnum, the deposited amount to be withdrawn and time be granted to the J.Dr. to pay the balance decretal amount.

Result:

57. In the result, the Civil Revision Petition is allowed in part with the following directions:

i. The order dated 26.04.2019 passed in E.P.No.41 of 2018 in O.S.No.218 of 2015 on the file of the learned Principal Civil Judge

(Junior Division), Proddatur, issuing process under Rule 38 of Order XXI CPC, is hereby set aside, and the matter is remanded for fresh adjudication.

ii. In the interregnum, the D.Hr. is permitted to withdraw the amount deposited by the J.Dr. pursuant to the interim order of this Court, along with accrued interest.

iii. The J.Dr. is further directed to pay 25% of the balance decretal amount within six (06) weeks and the remaining 50% before the trial Court within three (03) months from the date of this order, failing which, the trial Court, while considering the matter on remand, shall pass appropriate orders in execution. No order as to costs.

Interlocutory applications, if any, pending in this revision shall stand closed.

Interim order, if any, granted earlier shall stand vacated.

PURUSHOTTAM KUMAR CHINTALAPUDI, J

Dt: 30.10.2026
DSV

Lr. copy to be marked

Whether the order is:

Speaking		Reasoned	√
Reportable	√	Non-Reportable	