



2023:APHC:20221

**HIGH COURT OF ANDHRA PRADESH**  
MONDAY ,THE NINETEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY THREE

**PRSENT**

**THE HONOURABLE MS JUSTICE B S BHANUMATHI**  
**CIVIL REVISION PETITION NO: 82 OF 2022**

**Between:**

1. Yedida Surya Bhaskar Rao, S/o. Nageswararao, Hindu, 52y, Business, Buvvanapalli, Nidamarru Mandal, west Godavari District.

**...PETITIONER(S)**

**AND:**

1. Reddy and Reddy Imports and Exports, Bhimavaram, Rept. By its Partner, Golguri Srirama Reddy, S/o. satyanarayana Reddy, Hindu, 46y, Business, Bhimavaram, West Godavari District.

**...RESPONDENTS**

**Counsel for the Petitioner(s): MANGENA SREE RAMA RAO**

**Counsel for the Respondents:**

**The Court made the following: ORDER**



**THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI**  
**Civil Revision Petition No.82 of 2022**

Between:

Yedida Surya Bhaskar Rao,  
S/o Nageswararao, Hindu, aged 52 yrs,  
Business, Buvvanapalli, Nidamaru Mandal,  
West Godavari District.

....Petitioner

A n d

Reddy and Reddy Imports and Exports,  
Bhimavaram, rep. by its Partner,  
Golguri Srirama Reddy,  
S/o Satyanarayana Reddy, Hindu,  
Aged 46 yrs, Business, Bhimavaram,  
West Godavari District.

....Respondent

DATE OF ORDER PRONOUNCED : 19.06.2023

SUBMITTED FOR APPROVAL:

**THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI**

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|----|--|--------|
| 1. | Whether Reporters of Local Newspapers may be allowed to see the order? | Yes/No |
| 2. | Whether the copy of order may be marked to Law Reporters/Journals?     | Yes/No |
| 3. | Whether Her Ladyship wish to see the fair copy of the order?           | Yes/No |

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**B. S. BHANUMATHI,**



THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition No.82 of 2022

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Golguri Srirama Reddy,  
S/o Satyanarayana Reddy, Hindu,  
Aged 46 yrs, Business, Bhimavaram,  
West Godavari District.

....Respondent

! Counsel for the petitioner : Sri Mangena Sree Rama Rao

^ Counsel for the Respondent :

< Gist:

> Head Note:

? Cases referred:



THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition No.82 of 2022

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India by the petitioner/respondent against the order dated 29.11.2021 in E.P.No.37 of 2017 in O.S.No.16 of 2010 on the file of the court of Senior Civil Judge, Tadepalligudem, West Godavari District.

2. The petitioner is JDr and the respondent is DHr. DHr filed the execution petition to issue warrant of arrest against the JDr for realization of the decretal amount. The execution Court issued notice to JDr under Order 21 Rule 37(1) of CPC. In response thereto, the JDr appeared through a counsel and filed his counter denying the contention of the DHr as false. DHr further stated that he does not have any properties and is not earning Rs.2,00,000/- on commission basis as alleged by the DHr. He further denied of having RCC building bearing Door No.6-4/1 of Bhuvanapalli. He claimed that he is unable to work due to his ill-health of Hepatitis ICD CODE K 76.9 with a portal hyper tension ICD CODE K 76.6 peripheral neuropathy ICD CODE G 90.0 and he is under treatment of Dr.I Nalini Prasad MD, DM, consultant of Gastrologist Dr.A.Geetha Priyadarshini MD, DM, Consultant, Endocrinologist. He further placed reliance on the Lab reports in support of his health condition and prayed to dismiss the execution petition.



3. After hearing both sides as recorded by the execution Court itself, it allowed the execution petition and directed issue of warrant under Order 21, Rule 37(1) CPC and made the following observations at para 6 of its decision:

“In the earlier this Court has issued notice under Order 21 Rule 37(1) CPC. Though no evidence is adduced by the petitioner/DHr on the strength of the affidavit under Order 21, Rule 37(2) CPC warrant can be issued whenever the JDr fails to appear. It amounts to disobedience to the earlier notice even though he appeared through an Advocate since the notice under Order 21, Rule 37(1) CPC is mandatory obligation on the part of the judgment debtor and it is his obligation to appear before the executing Court in person on receiving the notice in obligation under Order 21, Rule 37 CPC for each and every adjournment. He cannot escape from his appearance by engaging an Advocate which would not constitute the strict compliance of Order 21, Rule 37(1) CPC. Therefore, in this case on hand the absence of JDr itself entitles the DHr for the arrest of the JDr.”

4. Having aggrieved by the same, the revision petition is filed by JDr mainly stating that it is mandatory to conduct the enquiry and that it is not mandatory that on every date of adjournment the JDr to appear before the Court. It is also contended that JDr can appear through a counsel and participate in the enquiry, however the execution Court went wrong in ordering arrest of JDr only on the ground of non-appearance.



5. On 23.02.2022, this Court recorded that the notice sent to the respondent/DHr was returned with an endorsement unclaimed. It is further recorded on 16.03.2022 that despite service of notice, none entered appearance on behalf of the respondent.

6. Therefore, the revision petitioner is heard.

7. Order 21, Rule 37 CPC reads as follows:

**Execution of Decrees and Orders**

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 1[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:

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

8. The proceeding subsequent to appearance of JDr on receipt of notice under Rule 37(1) CPC is incorporated in Order 21, Rule 40 CPC which reads as follows:

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.

9. Therefore, as per Rule 40(1), the execution Court shall proceed to hear the DHr and take of such evidence as may be produced by him in support of his application for execution and shall then give an opportunity to JDr to show cause why he should be committed to civil prison. It is settled law that for issue of warrant of arrest for the purpose of detention of JDr in civil prison, it is obligation of the DHr to establish means of JDr sufficient to discharge the decretal debt. In the present case instead of examining the means of JDr which is mandatory, the execution Court went wrong in assuming that the presence of JDr is required on all dates of adjournments before the Court and misread the provision under Rule 37(2) CPC and directed issue of warrant under Rule 37(1) CPC. A plain reading of Section 37(1) and (2) CPC makes it clear that such a warrant is contemplated only if JDr does not turn up to the notice under Rule 37(1). Since in the present case, JDr made appearance through counsel and it is not the observation of the execution Court that the JDr has not allowed the enquiry of means to be held for any reason, the observation and the interpretation of the execution Court of the legal provisions mentioned by it



in the order are improper and liable to be set aside. The DHr shall be given an opportunity of proving the means of JDr to discharge the decretal debt and similarly an opportunity shall be given to JDr to show cause why he should not be committed to civil prison. It is only upon such enquiry giving opportunity to both parties, the execution Court shall proceed further and take a decision either to issue warrant or not.

10. As such, the revision petition is allowed by setting aside the impugned order dated 29.11.2021 in E.P.No.37 of 2017 in O.S.No.16 of 2010 on the file of the court of Senior Civil Judge, Tadepalligudem, West Godavari District and the execution Court is directed to proceed further with enquiry contemplated under Order 21, Rule 40(1) CPC without insisting personal presence of the JDr on every date of adjournment, except when JDr is not represented by the counsel or for any other reason which requires JDr's physical presence. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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**B.S.BHANUMATHI, J**

Dt. 19-06-2023

PNV