



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
THE HONOURABLE DR JUSTICE K MANMADHA RAO
CIVIL REVISION PETITION NO: 1211 OF 2021

Between:

1. Sri. Sasanapuri Someswara Rao, S/o. Chinna Vasudeva Rao, 55y,
D.No.6-88, Near Old diary farm, Ravindra Nagar, Visakhaptnam

...PETITIONER(S)

AND:

1. M/s. Shriram City Union Finance Ltd, Vizianagaram branch, Represented
by its authorized Divisional Manager cum GPA holder, Sri Datl Raghu
Rama raju, s/o. Venkara rama raju Vizianagaram
2. Sasanapuri Laxmi, W/o. Someswara rao, 51y, D.No.6-88, Near Old diary
farm, ravindra Nagar, Visakhaptnam

...RESPONDENTS

Counsel for the Petitioner(s): S.V.S.S.SIVA RAM

Counsel for the Respondents: MAHESWARA RAO KUNCHEAM

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

CIVIL REVISION PETITION No. 1211 of 2021

ORDER: *(Per Hon'ble Sri Justice C. Praveen Kumar)*

1) The present C.R.P. is filed under Section 115 of Code of Civil Procedure, 1908, [**C.P.C.**] assailing the Order, dated 29th September, 2021, passed in E.P. no. 84 of 2017 in A.C. No. 563 of 2011, on the file of XII Additional District Judge, Visakhapatnam, wherein the E.P. was allowed for realization of the amount awarded with interest.

2) The averments in the affidavit filed in support of the E.P. would show that the 1st Respondent herein represented by its General Power of Holder filed a Claim Petition before the Sole Arbitrator for recovery of the amount due under the loan transaction. An Award came to be passed against the Judgment Debtors for payment of a sum of Rs.7,91,966.00. After obtaining the Award, Decree Holder requested the Judgment Debtors to pay the amount with interest and costs, but, there was no response. Hence, an Execution Petition came to be filed under Order XXI Rule 37 C.P.C., for realization of the E.P. amount, failing which to detain the 2nd Judgment Debtor in civil prison under Order XXI Rule 38 C.P.C. The averments further disclose that the 2nd Judgment Debtor is having sufficient means to pay



the amount awarded but intentionally avoiding to pay the amount.

3) Counter came to be filed before the trial Court stating that the 2nd Judgment Debtor is aged about 64 years, having no work and business, suffering with ill-health for which he is taking treatment in different hospitals. It is stated that, because of his health condition, he is not able to work and earn money and, as such, the claim amount cannot be paid. It is further stated that, since, there is no income he cannot repay the amount due.

4) In support of its case, the Decree Holder examined PW1, while 2nd Judgment Debtor got examined himself as RW1 and got marked Ex.B1 and Ex.B2.

5) After considering the material available on record, the trial Court found that the 2nd Judgment Debtor is doing business and his houses are not within the purview of Section 60 (1) C.P.C. It was further held that, 2nd Judgment Debtor has got sufficient means to pay the E.P. amount, but intentionally avoiding the same and, as such, he is liable for arrest and accordingly allowed the E.P. Challenging the same, the present C.R.P. is filed.

6) Sri. S.V.S.S. Sivaram, learned Counsel for the Petitioner, mainly submits that, in the absence of any evidence to show that the Petitioner has any property of his own or that he is earning, there cannot be any order of arrest. In other words, he



would submit that, the 2nd Judgment Debtor [Petitioner] has no means to pay the amount and any action taken would be contrary to the provisions of C.P.C. and also to the ratio laid down in the judgments in **G. Sudhakara Reddy V. Jahnavi Chit Fund Private Limited and Others**¹, and **Pandugayala Subbrayadu V. Kattamuri Sree Krishna**². He further submits that the burden of proving that the 2nd Judgment Debtor has source of money to repay the debt is on the Decree Holder. But, strangely the trial Court inferred that the 2nd Judgment Debtor is withholding the documentary evidence, which if produced would establish that he has source of income to repay the amount.

7) On the other hand, Sri. Maheswara Rao Kuncheam, learned Counsel appearing for Respondent No.1/Decree Holder, would contend that, a perusal of evidence on record show that the 2nd Judgment Debtor has properties and enough source of income to pay the amount. He further submits that, there is a deliberate and willful negligence on the part of Judgment Debtors to pay the amount and, as such, the Order under challenge requires no interference. Relying upon a judgment of this court in **Konda Subbaiah V. Yedoti Kamalakshaiah**³, he would contend that, the executing court was right in drawing an inference that the Judgment Debtor has suppressed the material available with him.

¹ 2006 (4) ALT 665

² 2008 (4) ALD 454

³ 2008 (6) ALD 290



8) In order to appreciate the same, it would be appropriate to refer to the two judgments relied upon by the Counsel for the Petitioner. In **Pandugayala Subbrayadu** [cited 2nd supra] the learned Single Judge after referring to **Jolly George Varghese V. Bank of Cochin**⁴ held that, the Courts are expected to be cautious while making an order of arrest in execution of decree since it involves personal liberty and it is necessary for the Courts to examine whether other modes of recovery are available to the decree-holder and whether it is absolutely necessary to order arrest for recovery of the decretal amount

9) In **G. Sudhakara Reddy** [cited 1st supra], the Court while dealing with the Order XX1 and Section 51 C.P.C. held that, the burden squarely lies on the decree holder to establish that the Judgment Debtor has got sufficient means to pay and that with a view to defeat the decree, he has been avoiding the payment. At the same time, it would also be appropriate to refer to a judgment in **Kanneganti Anjaneyulu and Ors. V. State Bank of India**⁵. In the said case, the issue before the Court relates to arrest of J.Drs. after setting them ex parte on their failure to appear in Court in pursuance of the notice issued under Order 21 Rule 37 C.P.C. The Court found that the Subordinate Court has not addressed with regard to the means of the J.Drs. to pay the decree debt and whether they willfully neglected and refused to pay the debt though having means to pay the same. No

⁴ AIR 1980 Supreme Court 470

⁵ 1997(2) ALT 303



enquiry was held and no positive finding was given on this aspect. Hence, the order under challenge therein was set aside.

10) Before proceeding further, it would also be necessary to see the judgment of the learned Single Judge in **Konda Subbaiah** [cited 3rd supra]. In the said case, an E.P. came to be filed to recover the decretal amount. The executing court issued notice to the respondent and after his appearance, undertook the enquiry. The Petitioner filed an affidavit in lieu of chief-examination and pleaded that the respondent is the owner of agricultural land to an extent of Ac.1.12 Cents and he is also doing business and possess adequate means to discharge the decree. Some documents came to be filed in support of the same. Though, in the counter filed in the E.P., the J.Dr. took the plea that he is small farmer, but he did not utter a word in the chief-examination. The counter filed does not even deny that he is doing business. The executing court placed burden on the Petitioner with regard to the status of the respondent as a landless poor. The approach of the executing court was found to be untenable in law by the Hon'ble High Court. The Court held that the duty of a decree holder in matters of this nature ends, where he places some material before the Executing Court, which indicates that the judgment-debtor is possessed of the property and means and thereafter the burden shifts to the judgment debtor to establish as to how he is handicapped from discharging the decree. Having regard to all the circumstances,



the C.R.P. was allowed and the order under revision was set-aside.

11) Keeping in view the judgments referred to above, we shall now proceed to deal with the case on hand.

12) As stated earlier, the issue now is whether the J.Dr., has any means to pay the amount and whether he is willfully denying payment of the amount?

13) PW1 in his examination-in-chief affidavit submits that 2nd Judgment Debtor is doing real estate business, iron ore business, commercial business and also doing business of hiring the vehicles. Though, he is having sufficient means to pay the amount, but intentionally avoiding to pay the amount. It was further stated that the 2nd Judgment Debtor and his family members are having two floor building, which fetches a rent of Rs.50,000/-. It is further stated in the affidavit that Judgment Debtors are doing fancy and kirana business. In the cross-examination of the Decree Holder, it was elicited that they have not submitted any documentary proof to show the nature of business and the details of business allegedly done by Judgment Debtor as mentioned in the affidavit-in-chief. It was further elicited that he cannot say the details, such as, door number, extent, boundaries, place etc, of the building owned by Judgment Debtor. He further admits that he has not submitted any documentary proof to show that 2nd Judgment Debtor is doing any fancy and kirana business.



14) The 2nd Judgment Debtor also filed his affidavit-in-chief stating that he has no means to pay and that his health condition also does not permit doing any business. However, in the cross-examination, he stated that he, his wife and son-in-law together took vehicle finance from Sri Ram City Union Finance Limited, Vizianagaram, and about 10 to 15 loans were obtained for doing transport business. The loan amounts were sanctioned on hypothecation of the vehicles. Subsequently, the hypothecated vehicles were seized and there is some balance to be repaid in discharge of the said loan. It was further elicited that since 2012 he has been suffering with ill-health and since last one year he has not been taking any treatment and that he has been staying with his daughter since last six years. He further admits that the house mentioned in the ration card and Aadhar card do not belong to him and also does not know to whom the said address belong to. To a suggestion that, he is continuing transport business, was denied by him. He further submits that, he has not taken any steps to declare him as insolvent subsequent to 2012.

15) As against the evidence of PW1, there is the evidence of RW1, who categorically admits that he is not aware of the house numbers mentioned in his Aadhar card and ration card.

16) The admissions elicited, namely, that he does not know the owners in whose names the houses mentioned in the Aadhar card and ration card are, does not by itself establish that he has



sufficient means to pay the amount. In fact, in **Jolly George Varghese** [cited 4th supra], the Hon'ble Supreme Court held that, even where it is pleaded that the Judgment debtor is possessed of some immovable property, the burden lies on the decree-holder to show that such property is not a property exempted from attachment in execution of a decree and that the Judgment debtor has the capacity to pay the decretal amount.

17) At this stage, the learned Counsel for the Respondent justified the arrest of the Petitioner/2nd Judgment Debtor in view of Section 51 of C.P.C.

18) The question that arises for consideration is, ***whether the trial Court was right in passing an order of arrest of the Petitioner committing him to Civil Prison in execution of a decree for payment of money?***

19) Similar issue came before this Court in **Kanneganti Anjaneyulu** [cited 5th supra], wherein, it was held as under:

"The crucial question to be considered in this revision petition is whether the order of arrest of the petitioners for the purpose of committing them in civil prison as ordered by the lower Court in execution of (the decree for) payment of money is in consonance with the provisions of Section 51 of C.P.C. which reads as follows:

"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) xxxx xxxx
- (b) xxxx xxxx
- (c) by arrest and detention in prison for such period not exceeding the period specified in Section 58 where arrest and detention is permissible under that Section;
- (d) xxxx xxxx
- (e) xxxx xxxx

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."



A reading of the provisions of the above Section makes it clear that the arrest and detention of a J.Dr. in civil prison in execution of a decree for payment of money is not a matter to be resorted to lightly. The scheme of Section 51, C.P.C. is to ensure that sufficient reasons exist for making an order of arrest and detention of a J.Dr. in civil prison in execution proceedings. Moreover, it is also evident that in every case of non-payment of decretal amount, a J.Dr. is not liable to be arrested and detained in civil prison unless the case falls within one of the clauses of the proviso to Section 51 C.P.C. To recover debts by the procedure of putting one in prison is flagrantly violative of Article 21 of the Constitution unless there is proof of the minimal fairness of his willful failure to pay in spite of his sufficient means and willful neglect and refusal to pay the decree-debt. The provisions under Section 51 C.P.C. read with Rule 37 of Order and (sic. are) concerned in the interest of the protection of the liberty and freedom of the J.Dr. which the Code considers to be of paramount importance. Any provision of law pertaining to the protection of such liberty and freedom of a citizen are (sic. is) to be construed as mandatory, violation of which, invariably results in vitiating the consequential order. The Court is obliged to issue a warrant for the arrest of a J.Dr. only when there is a positive finding that the J.Dr. though having means to pay the decree debt had willfully neglected and refused to pay the same. In the absence of such a positive finding, it would be extremely difficult to visualize that a person could be put behind the bars in pursuance of a civil proceeding by any Court of law. [**Jolly George Varghese**] [cited 4th supra].

20) Since, the finding of the trial Court is mainly based on the admissions in the evidence of RW1, namely, that he is not aware about the persons in whose name the property reflected in his Aadhar card and ration card is, there is no other material to show that he is having means to repay the debt amount. It may



be true that, the Petitioner was doing transport business and has taken 10 to 15 loans from the Respondent/Decree Holder herein, but, at the same time, it was also elicited that the buses/vehicles which were hypothecated to the Respondent/Decree Holder were seized and the Petitioner is said to be living with his daughter. If really the two houses mentioned in the Aadhar card and ration card form part of Petitioner's property, nothing prevented the Decree Holder to obtain necessary material from the Office of the Municipal Corporation to show that the Petitioner/Judgment Debtor has suppressed the material and acted in bad faith.

21) At this stage, it is to be noted that this Hon'ble Court while granting stay of arrest, directed the Petitioner herein i.e., Judgment Debtor to pay 25% of the awarded amount to the credit of E.P. within a period of three weeks, which was done.

22) Having regard to the above, while leaving it open to the Respondent/Decree Holder to avail other modes for recovery of the amount, the Order of arrest is set-aside and the amount paid pursuant to the interim order shall be withdrawn by the Respondent/Decree Holder if not already done and adjust the same towards the due amount. However, this Order shall not preclude the 1st Respondent from filing another E.P., if any material is secured from which the amount due can be recovered.



23) With the above direction, the Civil Revision Petition is ***disposed off***. No order as to costs.

24) As a sequel thereto, miscellaneous applications, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

Dr. K. MANMADHA RAO, J

Date: 09.02.2022

Note:

Lr. Copy to be marked.

B/o.

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THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

CIVIL REVISION PETITION No. 1211 of 2021

(Per Hon'ble Sri Justice C. Praveen Kumar)

Date: .02.2022

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