

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 2489 OF 2016

Between:

1. T.C. RAJAN S/o. T.Anajaiah Goudu
Occ: Cultivation,
R/o. Royalpata Village and Post, Peddapanjani Mandal,
Chittoor District.

...PETITIONER(S)

AND:

1. STATE OF ANDHRA PRADESH & ANOTHER Rep. by the District
Collector, Chittoor.
2. The Mandal Revenue Officer, Peddapanjani Mandal,
Chittoor District.

...RESPONDENTS

Counsel for the Petitioner(s): P V VIDYASAGAR

Counsel for the Respondents: GP FOR ARBITRATION (AP)

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.2489 of 2016

Between:

T.C.Rajan

... Petitioner/Decree-holder

Versus

State of Andhra Pradesh, represented by
the District Collector, Chittoor and one
(01) other.

...Respondents/Judgment-debtors

* * * * *

DATE OF ORDER PRONOUNCED : 18.07.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

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 His Lordship wish to see the
fair copy of the Order? Yes/No

JUSTICE B.V.L.N.CHAKRAVARTHI

*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.2489 of 2016

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...Respondents/Judgment-debtors

**! Counsel for the Revision
petitioner**

: Sri P.V.Vidyasagar

**^ Counsel for the Respondent
Nos.1 and 2**

: Sri Kota Subba Rao,
Government Pleader for Arbitration

< Gist:

> Head Note:

? Cases referred:

1. **Evuru Venkata Subbayya vs. Srishti Veerayya and others** reported in **AIR 1969 AP 92.**
2. **Arjuna Gounder vs. Govindaraju Reddiar** reported in **(1990) 2 MLJ 411.**
3. **Shivamurthy vs. Dannammadevi Cycle Mart** reported in **AIR 1987 Kant 26.**
4. **Mujeeb Ahmed Khan (JD-1) vs. Sadar Anjuman-E. Islamia and another** reported in **(2002) 1 An WR 403.**

This Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI
CIVIL REVISION PETITION NO.2489 OF 2016

ORDER:

Heard Sri P.V.Vidya Sagar, learned counsel for the revision-petitioner/decree-holder and learned Government Pleader for Arbitration appearing for the respondents/judgment-debtors.

2. This revision-petition is directed against the Order, dated 18.02.2016 in O.E.P.No.33 of 2005 in O.S.No.323 of 1996 on the file of Principal Junior Civil Judge, Punganur.

3. The revision-petitioner is the decree-holder. He filed the execution petition under Order XXI Rule 32 of the Code of Civil Procedure, 1908 (for brevity 'CPC') against the respondents/ District Collector, Chittoor and the Mandal Revenue Officer, Peddapanjani Mandal of Chittoor District, who are judgment-debtors, alleging that they have violated the decree of prohibitory injunction issued by the First Appellate Court in Appeal Suit No.27 of 2000, dated 30.08.2004.

4. The learned counsel for the revision-petitioner would submit that the Trial Court erroneously 'Dismissed' the execution petition though, the decree of the First Appellate Court was 'Confirmed' by the High Court of Judicature of Andhra Pradesh at

Hyderabad, while dismissing the Second Appeal No.36 of 2005 on 14.02.2014, filed by the respondents.

5. Learned Government Pleader for the respondents would submit that the learned Trial Court on facts categorically held that the decree-holder did not place any affidavit or oral evidence to prove the mode of violation of the decree by the judgment-debtors and there is no proof as to who violated the decree and therefore, refused to order the execution petition as requested by the decree-holder and in that view of the matter, there are no grounds to interfere with the finding of the learned Execution Court.

6. In the light of the above rival contentions of the revision petitioner/decreed-holder and the respondents/judgment-debtors, the point that arises for consideration is: -

“Whether the Trial Court committed any material irregularity in the Order, dated 18.02.2016 passed in O.E.P.No.33 of 2005 in O.S.No.323 of 1996 on the file of Principal Junior Civil Judge, Punganur?”

7. **P O I N T**: -

It is an admitted fact that the revision-petitioner/decreed-holder filed O.S.No.323 of 1996 on the file of Principal Junior Civil Judge, Punganur for ‘Permanent Injunction’ against the

respondents/judgment-debtors/defendants and the said suit was 'Dismissed' by the Trial Court *vide* Judgment, dated 03.07.2000. It is also an admitted fact that the revision-petitioner preferred First Appeal *vide* A.S.No.27 of 2000 on the file of Senior Civil Judge, Punganur and it was 'Allowed' *vide* Judgment and Decree, dated 30.08.2004. It is also an admitted fact that the respondents/judgment-debtors preferred Second Appeal *vide* S.A.No.36 of 2005 on the file of High Court of Judicature of Andhra Pradesh at Hyderabad and the second appeal was 'Dismissed' as devoid of merit, holding that the plaintiff i.e., the revision-petitioner herein is entitled to the relief of 'Declaration' and 'consequential Permanent Injunction' in respect of the plaint schedule property.

8. The revision-petitioner filed the above execution petition under Order XXI Rule 32 CPC seeking detention of the respondents/judgment-debtors in civil prison alleging violation of the decree of prohibitory injunction.

9. The High Court of Judicature of Andhra Pradesh at Hyderabad in **Evuru Venkata Subbayya vs. Srishti Veerayya and others**¹ considered the ambit of Order XXI, Rule 32 of CPC with reference to application of Order XXI Rule 32 (1) and (5) of

¹ AIR 1969 AP 92.

CPC and at para-No.5 held that “If a prohibitory injunction is disobeyed, the decree-holder will have a right to execute it and the word “injunction” in Order XXI Rule 32 (1) is covering prohibitory injunction.”

10. Therefore, Order XXI Rule 32 (1) CPC would apply to a decree for prohibitory injunction.

11. In this context, it is just and proper to refer ‘Order XXI Rule 32 (1) of CPC’, which is extracted hereunder:

Rule 32. Decree for specific performance for restitution of conjugal rights, or for an injunction: -

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

12. Therefore, the requirement under Sub-rule (1) of Rule 32 CPC is that the decree-holder shall prove that the judgment-debtor having had an opportunity to obey the decree, willfully

failed to obey it. Further, the Court shall not pass any order of detention in civil prison, until the Court gives a finding that judgment-debtor having had an opportunity to obey the decree, has willfully failed to obey it.

13. The High Court of Madras in **Arjuna Gounder vs. Govindaraju Reddiar**² held that “under Order 21 Rule 32 CPC two conditions must be established. One is that the party had an opportunity to obey the decree and the other is that the party had willfully failed to obey it.” It was also held that “unless these two conditions are satisfied, the Court cannot order detention in civil prison.” It was further held that “even if both the conditions are satisfied, still it is discretion of the Court to order attachment or detention in civil prison. The provisions of Order 21 Rule 32 CPC are penal in nature.”

14. The High Court of Madras in the above judgment held that “in fact, a proceeding under Order 21 Rule 32 CPC is a proceeding for punishment for contempt of Court and an extreme penalty of attachment of properties as well as detention in civil prison is provided for in the rule even in execution of a decree for restitution of conjugal rights, specific performance, and injunction.”

² (1990) 2 MLJ 411.

15. Therefore, when the provisions are so severe against judgment-debtor, it is the duty of the Court to consider the rule strictly and the Court which passes order under the rule must act strictly in accordance with the provisions of the rule.

16. The High Court of Karnataka in **Shivamurthy vs. Dannammadevi Cycle Mart**³ held at para-No.7 as under:

“The Court cannot make an order for detention without satisfying itself and recording a finding on the basis of materials produced that the person had opportunity of obeying the decree and has willfully failed to obey and the onus lies on the person seeking order of detention.”

17. The High Court of Judicature of Andhra Pradesh at Hyderabad in **Mujeeb Ahmed Khan (JD-1) vs. Sadar Anjuman E Islamia and another**⁴ considering Order XXI Rule 32 of CPC held at para-No.12 as under:

“The onus to place the relevant material for a direction to detain the judgment-debtor in civil prison is always on the decree-holder.”

18. In the case on hand, the Trial Court in its Order held that there is no evidence put-forth by the decree-holder to show that who has had committed the violation and mode of violation of the

³ AIR 1987 Kant 26.

⁴ (2002) 1 An WR 403.

decree. It was also observed that the decree-holder simply filed the copy of Judgment in Second Appeal No.36 of 2005 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad and he did not place either affidavit or oral evidence to establish that the judgment-debtors had an opportunity to obey the decree and they had willfully failed to obey it.

19. The contention of the learned counsel for the revision-petitioner/decree-holder is that the respondents/judgment-debtors filed an application under Section 47 CPC in the execution petition, and it would amount to disobedience of the decree.

20. The judgment-debtors filed an application under Section 47 CPC raising question/objections against execution regarding identity of the property.

21. Questions whether the property in question is included in the decree or relating to identity would fall under Section 47 CPC. Therefore, this Court is of the considered opinion that the act of filing an application under Section 47 CPC by the judgement debtors/respondents would not amount to willful disobedience of the decree.

22. The revision-petitioner/decreed-holder in his application before the Trial Court pleaded that the respondents/judgment-debtors willfully disobeyed the decree for prohibitory injunction, contending that the respondents/judgment-debtors interfering with his possession and enjoyment over the schedule property even after the decree.

23. The revision-petitioner/decreed-holder, as held by the learned Trial Judge, did not place any material to establish the mode of violation which causes obstruction of his possession and enjoyment over the schedule property and the judgment-debtors willfully violated the decree.

24. The Court shall exercise discretion only when the decreed-holder establish that the judgment-debtor has had an opportunity to obey the decree but, he willfully disobeyed the same. Unless, these two conditions are satisfied, the Court cannot order detention of the judgment-debtor in civil prison. Since the provision is extremely penal, those two conditions must be proved strictly by placing cogent and reliable evidence establishing the above two ingredients to order detention of the judgment-debtor in civil prison under Order XXI Rule 32 (1) CPC. The burden is on the decreed-holder to establish his case pleaded in the case.

25. The impugned Order would show that the revision-petitioner simply filed copy of Judgment in Second Appeal No.36 of 2005 and reported no evidence on his behalf, though, it was alleged that the respondents have violated the decree. He did not adduce any evidence whatsoever proving that the judgment-debtors disobeyed the decree. Therefore, there are no grounds to interfere with the impugned Order passed by the learned Trial Court.

26. Therefore, Civil Revision Petition is 'Dismissed'. There shall be no order as to costs.

27. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

18th July 2023.

Note: LR Copy is to be marked.

B/o.
DNB