



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE SIXTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
CIVIL REVISION PETITION NO: 3736 OF 2013

Between:

1. KAJA KISHORE KUMAR S/o Prasaad,
Occ:- School Assistant,
Zilla Parishad High School,
Thammavaram,
Kakinada Rural.

...PETITIONER(S)

AND:

1. TOLETI SYAM SUNDAR & ANOTHER S/o Venakta Ratnam,
Occ:- Retired Reader in Hindi,
C/o Idea degree College,
Kakinada.
2. Srira Chits Limited Kakinada rep by its Divisional Manager,
Kakinada,
(2nd respondent is not necessary party)

...RESPONDENTS

Counsel for the Petitioner(s): KAMLA SEELAM B

Counsel for the Respondents: RAVI KUMAR TOLETY

The Court made the following: ORDER



*THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

+Civil Revision Petition No.3736 of 2013

% 16-04-2021

Kaja Kishore Kumar

.. Petitioner

Vs.

\$ Dr. Toleti Shyam Sundar
and another

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Bokka Satyanarayana

^ Counsel for 1st respondent : Sri T. Ravikumar

^ Counsel for 2nd respondent : None appeared

? CASES REFERRED :

1) MANU/SC/0639/1993=1993 Supp (1) SCC 693

2) MANU/AP/3307/2013=2014(1) ALT 412



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
CIVIL REVISION PETITION No.3736 of 2013

Between:

Kaja Kishore Kumar

.. Petitioner

and

Dr. Toleti Shyam Sundar and another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 16.04.2021

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

U. DURGA PRASAD RAO, J

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****CIVIL REVISION PETITION No.3736 of 2013****ORDER:**

The challenge in this civil revision petition is to the order dated 15.07.2013 in E.P.No.197 of 2010 in O.S.No.473 of 2004 passed by learned II Additional Junior Civil Judge, Kakinada, allowing the petition filed under Order XXI Rule 37 CPC by the decree holder/1st respondent praying the execution Court to commit the petitioner/1st judgment debtor to civil prison in execution of the decree in O.S.No.473 of 2004.

2. The 1st respondent/decreed holder obtained a money decree against the petitioner/1st judgment debtor for Rs.65,584/- with subsequent interest and he filed E.P.No.197 of 2010 for arrest of the petitioner/1st judgment debtor contending that the petitioner has been working as School Assistant in Zilla Parishad High School, Thammavaram, Kakinada Rural Mandal, and getting a monthly salary of Rs.16,000/- and thus having sufficient means to discharge the decree amount, but still intentionally evaded to pay the amount.

3. The petitioner/1st judgment debtor mainly contended that the 1st respondent/decreed holder already filed another E.P. for attaching his salary to realise the decree debt and additionally filed the E.P. for his arrest and therefore, the E.P. is not maintainable under law. He cannot be brought under arrest without proceeding against his properties.



4. The execution Court negated the aforesaid contentions, rightly in my view, and observed that simultaneous execution proceedings for arrest as well as for other mode of realisation of the E.P. amount can be taken up and the 1st respondent/decreed holder cannot be found fault in this regard. The execution Court further observed that admittedly the petitioner/1st judgment debtor is working as a Teacher and drawing a monthly salary of Rs.16,000/- per month and thus having resources, but still he wilfully neglected to pay the decree amount and therefore, the E.P. for arrest is maintainable. Accordingly, the execution Court allowed the E.P. and issued arrest warrant against the petitioner/1st judgment debtor. Hence the civil revision petition at the instance of the petitioner/1st judgment debtor.

5. Heard Sri Bokka Satyanarayana, learned counsel for the petitioner/1st judgment debtor and Sri T. Ravikumar, learned counsel for the 1st respondent/decreed holder.

6. At the outset, I do not find any illegality or irregularity in the order impugned. Order XXI Rule 30 CPC governs the simultaneous execution of a money decree. It reads thus:

“Decree for payment of money – Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.”

The above rule says that a money decree, which is in its main form or as an alternative one, may be executed by decree holder by seeking



judgment debtor's detention in civil prison, or by attachment in sale of his property and most importantly 'or by both'. It is needless to emphasise that the employment of the words 'or by both' is an indicative of conferring choice on decree holder to choose either or both the modes of execution for realisation of his decree amount. There can be no demur so far as the said discretion of decree holder is concerned.

a) It is also pertinent to refer Rule 21 at this juncture. It reads thus:

“Simultaneous execution – The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor”

This rule speaks about the discretion of the Court to refuse simultaneous execution of a decree against the person and property of judgment debtor. This implies, when in a money decree, the decree holder simultaneously proceeds against Judgment debtor for sale of his property for realisation of the decree amount and also seeks his arrest and detention in civil prison, the Court may refuse.

b) When the above two provisions are studied conjunctively and examined meticulously, while Rule 30 gives choice to decree holder to execute a money decree by adopting separate or simultaneous modes i.e., proceeding against the person and property of judgment debtor, Rule 21, it can be understood, gives discretion to the execution Court to refuse simultaneous execution of proceeding against the person and property of judgment debtor. Of course, such discretion



must be used judiciously by the execution Court while refusing the simultaneous execution.

7. In *Shyam Singh Vs. Collector, District Hamirpur, U.P. and others*¹, the Hon'ble Apex Court observed as follows:

“Para 20 – xx xx xx xx xx The Court should, on the facts and circumstances of a particular case, decide as to whether simultaneous proceedings should be permitted against the debtor for realisation of the same amount. It is true while exercising such discretion, Court has to be conscious of the fact that the debtors are generally interested in delaying the realisation of the debts.”

8. In *Chalapati Chit Fund (P) Ltd. Vs. B. Rajasekhar*², when decree holder filed E.P. for arrest of judgment debtor Nos.2 and 3 for non-payment of EP amount, the lower Court dismissed the EP mainly on the ground that judgment debtor Nos.2 and 3 were Government servants and hence, the EP was not maintainable without taking recourse to recovery of decree amount by proceeding against their salaries. Aggrieved, decree holder filed C.R.P. before the combined High Court of Andhra Pradesh wherein a learned single Judge, while referring to Order XXI Rule 30 CPC and case law in that regard, observed thus:

“Para 3 – xx xx xx xx However, in Shyam Singh MANU/SC/0639/1993 : (1993) 1 SCC (Supp.) 693 (supra), the Supreme Court while recognizing existence of the right in the decree holder to resort to simultaneous execution of the decree through more than one method provided under Section 51 of CPC r/w Order XXI Rule 30 CPC, however, equally recognized existence of discretion of the Court to order simultaneous execution of the decree. It is held that while exercising such discretion, the Court must act in a judicious

¹ MANU/SC/0639/1993=1993 Supp (1) SCC 693

² MANU/AP/3307/2013=2014(1) ALT 412



manner. Thus, while there is no legal bar on the petitioner in seeking arrest of respondent Nos. 2 and 3, the Court below has felt that when the said respondents are Government servants, the petitioner can recover the decretal amount from their salaries instead of seeking their arrest.

4. The lower Court instead of holding in absolute terms that the execution petition for arrest is not maintainable ought to have modulated its view by observing that on the facts of the case, recovery of decretal amount through recovery of salary from respondent Nos. 2 and 3 shall be an appropriate course.”

a) Thus, the learned Judge observed that when there was no legal bar for decree holder to seek for arrest of judgment debtors, who were public servants, the lower Court, in stead of holding in definite/absolute terms that the execution petition for arrest was not maintainable, ought to have held that by facts of the case, recovery of decretal amount from the salaries of judgment debtors shall be in appropriate course.

b) Thus, from the above jurisprudence, it is clear that under Order XXI Rule 30 CPC, decree holder can seek for simultaneous execution for which there is no legal bar. However, when decree holder applies for such a simultaneous execution, the Court may, for valid reasons, refuse such simultaneous execution. The valid reasons depend upon the facts and circumstances of a given case.

9. Coming to the present case, it is not a matter of simultaneous execution. The order of the execution Court shows that earlier the 1st respondent/decreet holder filed E.P.No.395 of 2007 for recovery of the E.P. amount by attachment of the salary of the petitioner/1st judgment debtor and the said EP was dismissed for default on 10.12.2007. The



subject E.P.No.197 of 2010 was filed on 02.12.2009 for arrest of the petitioner/1st judgment debtor. Admittedly, the petitioner/1st judgment debtor is a Teacher and drawing a monthly salary of Rs.16,000/- and he did not pay any amount after dismissal of E.P.No.395 of 2007 till filing of E.P.No.197 of 2010. Since it was not a simultaneous execution and as the petitioner/1st judgment debtor is having sufficient means but did not pay any amount in the interregnum period of dismissal of the earlier EP and filing of the present EP, despite having sufficient means, the execution Court has held that the EP is maintainable. In my view, the execution Court has applied its discretion in a judicious manner and therefore, there needs no interference with its order.

10. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

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

U.DURGA PRASAD RAO, J

16th April, 2021

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HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.R.P.No.3736 of 2013

16th April, 2021

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