
(2011) 03 AP CK 0054

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 831 of 2011

B. Gangadharam

APPELLANT

Vs

D. Siva Sankar Reddy

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 21 Rule 37, 115, 151

Citation : (2011) 8 RCR(Civil) 699

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : R. Ramanjaneyulu, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The Respondent filed O.S. No. 981 of 1999 in the Court of Junior Civil Judge, Banaganapalle, against the Petitioner, for recovery of certain amount. The suit was decreed on 31.08.2000. Initially, the Respondent filed E.P. No. 125 of 2007. The Petitioner filed E.A. No. 387 of 2008 raising objection as to maintainability of the E.P. It is stated that the said E.P. was dismissed. The Respondent filed E.P. No. 91 of 2009 under Rule 37 of Order XXI CPC , for arrest of the Petitioner. The Petitioner filed E.A. No. 391 of 2010 u/s 151 Code of CPC , with a prayer to dismiss the E.P. The ground urged by him was that the notice under Rule 22 of Order XXI Code of CPC , was not issued to him. The executing Court dismissed the E.A., through order dated 10.12.2010. Hence, this revision.

2. Heard Sri R. Ramanjaneyulu, learned Counsel for the Petitioner.

3. E.A. No. 391 of 2010 filed by the Petitioner is totally untenable. The only ground urged was that the Respondent to have issued notice to him before filing the E.P.

4. If an execution petition is filed by a decree-holder within two years, for the relief, other than the one pertaining to detention in civil prison, or sale of

property in execution, steps therein can take place without issuing notice to the judgment-debtor. Where, however, the E.P. is filed after lapse of two years from the date of decree, the executing Court would be under obligation to issue notice as contemplated under Rule 22. E.P. filed by invoking Rule 37 of Order XXI Code of CPC , stands on a different footing. Irrespective of the date of its filing, any further steps can take place only after notice to the judgment-debtor. Rule 1 thereof makes it mandatory for the executing Court to issue notice calling upon the judgment-debtor to appear before the Court on the date specified in the show cause notice. It is only in exceptional cases where the executing Court is satisfied that the judgment-debtor is absconding from local limits of the Court that it can dispense with the notice.

5. Once the judgment-debtor appears before the Court, almost a trial like, procedure needs to be followed. The decree-holder would be under obligation to prove that the judgment-debtor is in possession of adequate means and still is not paying the amount. Therefore, Rule 22 of Order XXI Code of CPC , cannot be made applicable to any execution petition filed under Rule 37 of Order XXI Code of CPC , the reason being that a separate procedure altogether is prescribed for that set of proceedings. At any rate, the Petitioner was served with notice and entered appearance. Insistence on further notice is almost meaningless.

6. Added to that, the question of issuance of a notice under Rule 22 would arise only after the E.P. is filed. The very filing of an E.P., cannot be challenged on the ground that the notice under that provision was not issued.

7. Hence, the C.R.P. is dismissed. It is left open to the Petitioner to contest the E.P., as provided for under Rule 37 of Order XXI Code of Civil Procedure.

There shall be no order as costs.