

(1997) 08 AP CK 0068

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2307 of 1995

D. Seetha Rami Reddy

APPELLANT

Vs

Madras Motor Finance Guarantee Company Ltd.

RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 21 Rule 37, 51

Citation : (1997) 6 ALT 230

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : T. Rajendra Prasad, for the Appellant; M.V.S. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—Order of arrest passed against the petitioner-judgment-debtor herein in E.P.No. 23 of 1994 in M.O.S.No. 2946 of 1981 on 5-7-1995 by the Subordinate Judge, Kavali is assailed in this revision on various grounds.

2. Petitioner is the judgment-debtor and he suffered a money decree in M.O.S.No. 2946 of 1981 on 9-12-1982. Though the decree-holder made several efforts, the petitioner herein did not pay any amount to discharge his decretal obligation, which necessitated the decree-holder to file E.P.No. 23 of 1994 for realisation of the decretal amount of Rs. 1,51,090/- with interest as on 29-7-1994. In the said E.P., the decree-holder had invoked two provisions, viz., Order 21 Rule 22 CPC and Order 21 Rule 37 CPC and notices were sent accordingly to the judgment-debtor. Having received the notices, the judgment-debtor contended that issuance of notices under Order 21 Rule 22 CPC and Order 21 Rule 37 CPC simultaneously is not correct and contended that the E.P. is liable to be dismissed on this count alone. It was also pleaded that the judgment-debtor has no capacity to pay the decretal amount.

3. In the said E.P., the decree-holder examined P.W.1 on its behalf and none was

examined on behalf of the judgment-debtor. The lower Court on the basis of the evidence let in and keeping in view the fact that the execution petition" was filed in the year 1994, held that issuing notices under Order 21 Rule 22 and Order 21 Rule 37 of CPC is proper. The lower Court also found that the judgment-debtor being an A-class Railway Contractor and having a house worth Rs. 10,00,000/- was not evincing any interest to discharge his decretal obligation deliberately and therefore, in the circumstances, the lower Court ordered arrest of the judgment-debtor.

4. The order of arrest which is dated 5-7-1995 passed in E.P.No. 23 of 1994 is assailed by the judgment-debtor in this revision on various grounds u/s 115 of CPC.

5. This Civil Revision Petition is filed u/s 115 of CPC. It shall be remembered that the power of this Court u/s 115 CPC is limited only to the following extent to interfere with the impugned order:

- (1) if the Court below exercised a jurisdiction not vested in it by law; or
- (2) if the Court below failed to exercise a jurisdiction so vested; or
- (3) if the Court below acted in the exercise of its jurisdiction illegally or with material irregularity; and
- (4) if the impugned order of the Court below if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

6. Keeping the above provisions of Section 115 of CPC, I shall now proceed to decide the submissions made on behalf of the petitioner-judgment-debtor on merits.

7. Sri T.Rajendra Prasad, learned Counsel for the petitioner/judgment-debtor firstly contends that in the absence of the decree-holder failing to prove before the Court below that the judgment-debtor despite having sufficient means is evading payment of the decretal amount, ordering arrest of the judgment-debtor by the Court below is erroneous. Secondly, learned Counsel contended that though the judgment-debtor has a building worth Rs. 10 lakhs, that building is subjected to attachment in favour of the very same decree-holder in another E.P. and as such the decree-holder could have sought selling of the building and ought to have realised the moneys arising out of the present suit and the earlier suit. Having had this opportunity, it is contended, the decree-holder ought not to have sought arrest of the petitioner. Learned Counsel thirdly contended that in terms of Section 51 of CPC, as long as there is no finding by the Court below that the petitioner had sufficient means to pay, arrest of the petitioner could have been avoided. Learned Counsel finally submitted that the lower Court erred in not considering all these factors and has erroneously ordered the arrest of the judgment-debtor and the impugned order is liable to be set aside. In support of his contentions, learned Counsel has relied on the following decisions reported in

Raja Kandimalla Seetharama Rao Vs. Mothey Anja Ratna Raja Kumar, ; Jolly George Varghese and Another Vs. The Bank of Cochin, and in E. Murugaiah and Another Vs. C. Ekambara Reddy, .

8. On the contrary, Sri Srinivas, junior Counsel representing Sri M.V.S.Suresh Kumar, learned Counsel for the respondent-decree-holder submits that the suit O.S.No. 2946 of 1981 was decreed on 9-12-1982. It is not disputed that the judgment-debtor is an A-class Railway Contractor. Having had nearly 12 years of time from the date of judgment and decree, there was no attempt on the part of the judgment-debtor to discharge his obligation arising out of the said decree and therefore, the present E.P. was filed in the year 1994 just before the expiry of the limitation period. Even after filing the E.P., there was no attempt on the part of the judgment-debtor to discharge his decretal obligation. Learned Counsel contended that admittedly the judgment-debtor has a building worth Rs. 10 lakhs and he did not make any attempt to sell the building after obtaining necessary permission from the Court which has ordered its attachment in another case to discharge his decretal obligation. Counsel therefore stated that the lower Court has given a categorical finding holding that the petitioner-judgment-debtor having sufficient means failed to discharge his decretal obligation and has rightly ordered his arrest and submits that no interference is called for in the impugned order.

9. In the wake of these submissions, the paramount question that falls for consideration is whether the Court below has committed any material irregularity in passing the impugned order and if the impugned order is allowed to stand, would it occasion a failure of justice and cause irreparable injury to the petitioner/judgment-debtor?

10. Admittedly, the suit was decreed against the petitioner/judgment-debtor on 9-12-1982. The decree-holder, having been patiently waited for 12 long years with the fond hope that the judgment-debtor would pay the decretal amount, however, as the judgment-debtor did not make any efforts to pay the decretal amount, filed the E.P.No. 23 of 1994 before the expiry of the limitation period. Even after filing the Execution Petition, the judgment-debtor did not make any efforts to discharge his decretal obligation.

11. It is not disputed that the judgment-debtor has got a house worth Rs. 10 lakhs. Therefore, it can safely be construed that the judgment-debtor though having sufficient means to discharge the decretal obligation has deliberately not done so. The submission that the said house is subjected to attachment in another execution petition filed by the very same decree-holder pertaining to some other transaction, cannot be countenanced for the simple reason that the judgment-debtor at no point of time had made any sincere efforts to move the Execution Court by filing an application seeking permission of the Court to sell away his house in order to clear off the decretal amount. Had the judgment-debtor been sincere enough to clear off the decretal obligation, he would not have waited for 12 long years till filing of the E.P. This callous and indifferent

attitude on the part of the judgment-debtor is itself an indication as to how "sincere" he is, in discharging his decretal obligation. Further, it is also not disputed that the judgment-debtor is an A-class railway contractor and it is not beyond his means to discharge the decretal obligation.

12. All these factors lead to the inescapable conclusion that the judgment- debtor despite having sufficient means to discharge the decretal obligation arising out of the execution proceedings has deliberately and wilfully evaded to discharge the same.

13. Counsel for the judgment-debtor contended that in terms of Section 51 of CPC, as long as there is no finding by the Court below that the petitioner/ judgment-debtor has sufficient means to pay, his arrest could be avoided. This contention cannot be sustained. The lower Court has categorically and in no uncertain terms held that the judgment-debtor is an A-class Railway Contractor and has got a house worth of Rs. 10 lakhs and is having sufficient means to discharge his decretal obligation. It is also not the case of the petitioner/ judgment-debtor that he has no other property except the house worth Rs. 10 lakhs. Having been an A-class Contractor of Railways and having a house worth Rs. 10 lakhs, it would not have been impossible for the petitioner/judgment-debtor to discharge his decretal obligation. The Court below, in the set of circumstances and taking into consideration the attitude of the petitioner/ judgment-debtor found that despite having sufficient means, 10 is intentionally and willfully avoiding to discharge the decretal obligation, has ordered arrest of the petitioner, which in my view, is not improper.

14. Law cannot be a treasure-hunt in the hands of a few people like petitioner who designedly frustrate and circumvent the legal process. Petitioner has conveniently tried to frustrate and prevent the decree-holder from enjoying the fruits of the decree which was obtained way back in the year 1982. The acts of the petitioner are highly reprehensible and disgraceful.

15. While admitting the CRP, this Court in CMP No. 9702 of 1995, suspended the operation of the order of arrest passed by the lower Court in E.P.No. 23 of 1994 on 5-7-1995. The respondent-decree-holder filed vacate petition CMP No. 11624 of 1995 and the matter was contested. However, this Court by an order dated 7-3-1996 modified the order directing the petitioner to deposit a sum of Rs. one lakh within a specified period in the Court of the Subordinate Judge, Kavali, failing which the order of arrest would revive. It is now made known to this Court during the hearing of the revision that the petitioner has complied with the condition by depositing a sum of Rs. one lakh as directed by this Court. What else could be needed for this Court to hold that the petitioner has sufficient means and despite having sufficient means to discharge the decretal obligation has deliberately failed to do so.

16. Though the learned Counsel for the petitioner has referred to the decisions cited supra in support of his contentions, I am of the view, there is no dispute as

far as the proposition laid down therein. However, each case has to be considered and decided on its own merits. In this case, the Court below has categorically held that the petitioner/judgment-debtor despite having sufficient means to discharge his decretal obligation, has intentionally and wilfully failed to discharge the same. Therefore, the decisions cited by the learned Counsel for the petitioner have no application to the facts and circumstances of the case.

17. Having regard to the above discussion, I am inclined to hold that the Court below has not committed any irregularity, muchless, material irregularity in ordering the arrest of the petitioner/judgment-debtor and the impugned order of the Court below does not warrant any interference by this Court u/s 115 of CPC.

18. Accordingly, this Civil Revision Petition is dismissed. However, no costs.