

**(1996) 07 AP CK 0066**

**In the Andhra Pradesh High Court**

**Case No : Civil Revision Petition No. 1429 of 1994**

Fidelity Finance Ltd.

APPELLANT

Vs

M. Chandrasekhar

RESPONDENT

**Date of Decision : 22-07-1996**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115, 136, 136(3)

**Citation :** (1996) 3 ALT 496 : (1997) 1 APLJ 392

**Hon'ble Judges :** K.B. Siddappa, J

**Bench :** Single Bench

**Advocate :** Noushad Ali, for the Appellant; B. Narasimha Sarma, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.B. Siddappa, J.—This Civil Revision Petition is filed against the order passed in LA. No. 1442/93 in O.S. No. 268/91 on the file of Additional Subordinate Judge, Chittoor.

2. The said Interlocutory Application was filed by the plaintiff u/s 136 C.P.C. for arrest of the respondents 1 to 3 and to direct them to furnish appropriate security for due performance of the decree.

3. It was stated in the said petition that the suit was filed for recovery of Rs. 1,18,351/-. The respondents 1 to 3 are residing at Cuddapah and are residents or Madurai of Tamilnadu State. It was alleged that with a view to delay and defraud the debt due to the plaintiff, the respondents 1 to 3 are making hectic efforts to sell away the property. They are also trying to leave the local limits of the Court. It was the case of the petitioner that unless the respondents 1 to 3 are brought under arrest before the Court and directed to furnish security, their due appearance is not possible to realise the suit amount. Hence, the petition.

4. The said petition was resisted by the 3rd respondent by filing a counter. He denied the material allegations made in the petition. The 3rd respondent was not

the borrower. He was only an ex-employee of the petitioner-Company. The 1st respondent is the real debtor. The 3rd respondent being an ex-employee of the petitioner-Company is not in contractual obligation to pay the suit claim. He is not the debtor of the Company. Hence, the petition is not maintainable. The real borrower, who is the 1st respondent, has sufficient property to satisfy the suit claim. The same can be attached before judgment. He further stated that the headquarters of the plaintiff Company was at Madras when he was in service of the Company. At that time he resided and carried on business in Chittoor District. There was no permission to act on behalf of the principal. Unless, permission is granted by the Court, the petition is not maintainable as per Rule 32 of the Civil Rules of Practice. The provisions of Section 136 C.P.C. will only be invoked when it is shown that person has vitiated any order of the Court made u/s 39 C.P.C. Hence, this petition is not maintainable. It is only filed to harass the respondents, etc.

5. After considering the rival contentions the learned Subordinate Judge dismissed the petition without costs.

6. Aggrieved by the said order the present Revision is filed.

7. The learned counsel appearing for the petitioner submitted that the 3rd respondent is a resident of Madurai, which is beyond the jurisdiction of the Court. His presence could not be procured. The arrest warrants issued on 24-11-1993 could not be executed. Therefore, he filed this petition u/s 136 C.P.C. to arrest the respondents and to direct them to furnish sufficient security to satisfy the decree. In his submission, the Petition is maintainable and the order of the lower Court in dismissing the same is not correct.

8. It is not disputed that after warrants were issued, the 3rd respondent appeared before the Court and engaged an Advocate also. He also filed written statement and issues are also framed. Now the Suit is ripe for trial. In such a case, there is no question of compelling the 3rd respondent to appear before the Court by invoking Section 136 C.P.C. The learned counsel mainly submitted even if the 3rd respondent appeared before the Court, still Section 136(3) can be invoked and he can be asked to furnish sufficient security for his appearance before the Court and also satisfying the decree that may be passed against him by the Court. I am unable to agree with this contention. The opening words of Sub-section (3) of Section 136 C.P.C. clearly indicate that to invoke that provision the person should have already been arrested in pursuance of the warrants issued. This is not the case before us. Before executing the warrants, as already stated, the 3rd respondent appeared and Vakalat was also filed on his behalf. Therefore, he cannot be asked to furnish security etc. The lower Court considering all these aspects had rightly dismissed the application of the plaintiff. Hence, there are no grounds to interfere with the order under Revision.

9. Therefore the Revision is dismissed and in the circumstances without costs.