
(2006) 11 AP CK 0062
In the Andhra Pradesh High Court
Case No : CRP No. 4748 of 2004

K. Srinivas Rao

APPELLANT

Vs

K. Renuke Bai

RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39(4)
Family Courts Act, 1984 — Section 18, 18(3)

Citation : (2007) 1 ALD 691 : (2007) 2 ALT 659

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : M.S. Rajpurohit, for S. Chandrasekhar, for the Appellant; T. Mohan Rao (NP), for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Respondent filed an application for maintenance before the Family Court, Secunderabad, against the revision petitioner in O.S. No. 86 of 2001 and obtained an order of interim maintenance of Rs. 750/- p.m. She filed E.P. No. 3/2004 before the Family Court, Secunderabad, to execute the said decree by arrest of the revision petitioner. Revision petitioner contested the EP inter alia on the ground that the Family Court, Secunderabad has no jurisdiction to entertain the EP for his arrest as he is a resident of Bellampalli, Adilabad District and as he has no means to pay the amount covered by the decree. Overruling the objection of the revision petitioner the Family Court directed issuance of a warrant of arrest of the revision petitioner, though the respondent did not adduce evidence regarding his means. Hence this revision.

2. The main contention of the learned Counsel for the revision petitioner is that though the revision petitioner took a specific plea in his counter that the Family Court has no jurisdiction to entertain the EP for his arrest, in view of Section 39(4) CPC, as he is not residing at the territorial limits of the jurisdiction of the Family Court, Secunderabad, the Family Court without adverting to the said

objection wrongly ordered arrest of the revision petitioner. His next contention is that since there is no evidence on record to show that the revision petitioner having means to pay is evading to pay the decretal amount.

3. There is no representation on behalf of the respondent though served.

4. From the order under revision it is seen that a specific contention was raised before the Family Court that in view of Section 18 of the Family Courts Act (for short "the Act") it has jurisdiction to entertain the execution petition.

5. Since Section 18 of the Act, lays down that the Family Court itself is competent to execute the decrees passed by it in the manner provided by CPC, it is clear that the provisions of CPC relating to execution apply to the orders passed by the Family Court while acting as an executing Court. Since the revision petitioner, admittedly, is not residing within the territorial limits of the jurisdiction of the Family Court, Secunderabad, as his place of residence is shown as "Adilabad", in view of Section 39(4) CPC, Family Court ought not to have entertained the application for arrest of the revision petitioner and should have, in view of Section 18(3) of the Act, transmitted the decree to a competent Court in Adilabad District to execute the decree against the revision petitioner. For that reason alone the order under revision is not sustainable.

6. There is force in the contention of the learned Counsel for the revision petitioner that the Family Court was in error in issuing a warrant of arrest of the revision petitioner without going into the question of means of the revision petitioner. Since CPC is applicable to the decrees passed by the Family Court, the Family Court should have directed the parties to adduce evidence regarding the means of the revision petitioner. But in any event, since I held that the Family Court has no jurisdiction to entertain the E.P. I need not go into the question of means. Hence, the revision is allowed. The order under revision is set aside and the EP is remitted to the Family Court, Secunderabad, for being transmitted to a Court in whose territorial jurisdiction the revision petitioner is living or has properties. No costs.