
(2001) 08 AP CK 0168
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1349 of 1999

Karnati Suryanarayana

APPELLANT

Vs

Sri Rama Finance Corporation

RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 51

Citation : (2001) 2 AnWR 377 : (2001) 2 APLJ 445

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : R.K. Chitta, for the Appellant; M. Rajamalla Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The judgment debtor in EP.No.56 of 1997 in O.S.No.34 of 1992 on the file of the Senior Civil Judge, Miryalguda, is the revision petitioner and the revision petitioner is the defendant in O.S.No.34 of 1992 on the file of the Senior Civil Judge, Miryalguda and he had suffered a decree for Rs.1,36,316-50 ps. The respondent herein who is the decree holder filed EP.No.56 of 1997 for arrest and detention of the judgment debtor, which was allowed by the learned Senior Civil Judge, Miryalguda by order dated 5-3-1999. Aggrieved by the same, the judgment debtor has preferred the present revision petition.

2. Shri Ashok Anand, representing Sri R.K. Chitta, appearing for the revision petitioner-judgment debtor had submitted that the judgment debtor is an old man and there is no clear evidence to the effect that the judgment debtor is having means to pay the decretal amount. The learned Counsel contended that in the impugned order, the period of detention also was not specified. The learned Counsel also had drawn my attention to the relevant portion of the order of the court below and had pointed out that the evidence of PW.1 and also Exs.A1 and A2 may not be sufficient evidence to prove the means of the

judgment debtor. Even otherwise, before ordering arrest, a notice shall be preceded with and since no such notice was issued, the order itself is bad in law. The learned Counsel had drawn my attention to Section 51 of the CPC (CPC) and also placed reliance on several decisions like JOLLY GEORGE VERGHESE vs. THE BANK OF COCHIN (1), ALURU VENKATA RAO vs. K.V.S.K.JAGAN MOHAN RAO (2); J.VENUGOPAL vs. SYNDICATE BANK, KAVALI (3); SIKILE MOSES vs. KOTURI SEETA RAM DAS (4); R.V.J.SASTRY vs. BANK OF INDIA (5); SEETHARAMA RAO vs. RAJA KUMAR (6); V.GANESH NADAR vs. K.CHELLATHAI AMMAL (7); and also P.SARATCHANDRA VS. G.ESWARA RAO (8).

3. Shri Rajmalla Reddy, the learned Counsel representing the decree holder-respondent had pointed out that appeal in AS.No.37/98 filed against the judgment and decree in OS.No.34 of 1992 was dismissed by the appellate Judge viz., I Additional District Judge, Nalgonda. The learned Counsel also had drawn my attention to the evidence of PW.1 and RW.1 and also Exs.A1 and A2 and stated that the conduct of the judgment debtor in refusing or neglecting to pay the decretal amount though he has means to pay is totally unsustainable. Further, the learned Counsel had drawn my attention to the relevant portions of the order and submitted that on the strength of Exs.A1 and A2, a clear finding had been recorded by the Court below relating to the means of the judgment debtor and the neglect of the judgment debtor in discharging the decretal amount and hence in the circumstances of the case, it can be taken that the judgment debtor is evading to pay the amount and the Court below had rightly ordered arrest of the judgment debtor. Coming to the aspect of the non-mentioning of the period of detention, the learned Counsel had submitted that it is only a defect which can be rectified even by the revisional Court by specifying the period of detention. The learned Counsel had placed reliance on V.SURYA RAO vs. S.SARATHI (9); J. J. SHANKAR vs. S.M.IAMAIL (10); and D.SEETHARAMA REDDY vs. MADRAS MOTOR FINANCE GUARANTEE CO. LTD (11).

4. It is no doubt true that in T.DORAISWAMY REDDY vs. K.KONDA NAIDU (12) this Court had expressed an opinion that while making an order of arrest, the period of detention shall also be specified. In J.J. Shankar's case (10 supra), this Court was pleased to observe that:

"A modern society, based upon money economy, is sure to collapse if debts are not promptly collected. It is not without social significance that all religions insist upon payment of debts as a spiritual duty. The doctrine of "pious obligation", is well known to Hindu law. In principle, therefore, Section 51 CPC with the aim of collecting old debts, cannot be objected to. The method it provides cannot be called cruel or unusual or inhuman either. Section 51 CPC does not authorise the execution of a money decree by arrest of the judgment debtor except in case where the judgment debtor acts in bad faith. In other words, every judgment debtor is not made by the Act subject to Section 51 CPC. There can be no legal or constitutional objection for execution of a decree by arrest and detention of an individual judgment debtor who deliberately refuses or neglects to pay a decretal

amount while possessing the capacity to pay. Social moratorium is a different matter. The argument of the learned counsel that his client cannot be arrested even though he has failed to pay the decretal amount while being in a position to pay cannot be accepted."

5. Coming to the facts of the case, the Court below in fact after appreciation of the oral and documentary evidence had recorded a finding relating to the sufficient means of the judgment debtor. It may be appropriate at this juncture to look into the relevant portion of the order of the Court below, which reads as follows:

"In order to prove his bonafide claim that having sufficient means to pay the decretal amount, the judgment debtor is evading to pay the decretal amount, he has placed two reliances marked as Ex.A-1 and A-2 which are certified copies of pahanies for the years 1985-86 and 1995-96. By placing those reliances, the PW.1 intended to impress upon the Court the fact that the judgment debtor is in possession of landed properties of his own and h e has capacity to discharge the debt owed to him under the decree. A careful perusal of the A-1 and A-2 clearly go to show the fact that the judgment debtor herein is having landed properties of his own, in other words, he has financial capacity to discharge the decretal amount. However, J. Dr. herein who has examined as RW.1 denied that he is in possession of the said property as shown in Ex.A-1 and A-2. On the other hand, he claimed to have sold away the properties of his own and that he has got no any property of his own. Further, in order to prove his claim to be bonafide one he placed reliances marked as B-1 to B-3 which are certified copies of plaints in O.S.No.53/95, 52/95 and 51/95 on the file of Junior Civil Judge, Miryalguda. The said Ex.B-1 to B-3 does not come in the way of the bonafide claim of the E.P. decree holder in view of reason that the claim sought for in the above said suits pending on the file of Junior Civil Judge, Miryalguda does not pertain to the lands shown in Ex.A-1 to A-2. The said suits said to be pending before the Court of Junior Civil Judge, Miryalguda are in respect of the land in Sy.No.51 which is no way concerned with the lands claimed to be possession and enjoyment of the J. Dr. shown in Ex.A-1 and A-2. However, when confronted in the cross examination, it has come in evidence that the J. Dr. is having properties of his own and thereby he has got financial capacity to discharge the debt owed to the D. Hr. The claim of the J. Dr. herein is that there is an appeal pending before the Court of law against the Judgment and Decree based on which the present EP arises for consideration cannot have any effect for the reason that the proceedings pending in this Court for realisation of amounts from the J. Dr. are not stayed by the Appellate authority before which an appeal is pending against the judgment and decree in O.S.No.34/92. Because an appeal proceedings are pending before the Court of law against the judgment and decree No.34/92, it does not mean that D. He is precluded from proceeding for realisation of decretal amount from the J. Dr. herein as per the decree dated 16-10-1996."

6. It is not a case where the Court below had made any cryptic order or an order

not supported by reasons. The Court below infact was satisfied about the material placed before the Court accepting Exs.A1 and A2 relating to means of the judgment debtor. The evidence of PW.1 is also available in this regard. It may be that the judgment debtor has sufficient means. But that itself cannot be a ground to refuse the relief of arrest and detention which relief is prayed for by the decree holder. Since recovery of money in execution by arrest and detention of judgment debtor is one of the modes of recovery provided for under Order XXI CPC, the important aspect that may have to be looked into while making an order of arrest is whether the procedure specified under the provisions of the CPC had been followed or not. If the procedural aspects have been substantially complied with and a finding had been recorded based on reasons, such an order of arrest can be said to be sustainable in law. It is no doubt true that in some of the orders relating to the arrest of the judgment debtor, the Courts below are not meticulously following the procedural formalities to be complied with in accordance with the procedure. It is suffice for me to observe that the revisional Court has to say whether the Court below had applied its mind properly or not while making order of arrest and whether the procedural formalities have been substantially complied with and in case any such formality had not been complied with and if the revision petition is filed on such curable irregularity, it can be rectified by the revisional Court itself in the interest of justice in stead of remitting the matter back to the Court below. I am of the considered opinion that it is always within the purview of the revisional Court to rectify such technical procedural defects. Here is a case where the impugned order does not suffer from any other legal infirmity except non specification of the period of detention and as rightly contended by the learned Counsel representing the decree holder, instead of remitting the matter back to the Court below, such a defect can be rectified here itself.

7. In the light of the foregoing discussions, the impugned order of the Court below is further clarified specifying the period of detention as three months. Except for the modification in specifying the period of detention, I do not find any other merits in the Revision Petition. The Revision Petition is accordingly dismissed. No costs.