

(2010) 02 AP CK 0009

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3453 of 2006

Patnana Venkataramana

APPELLANT

Vs

Vungatla Appa Rao

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37, Order 21 Rule 41, Order 21 Rule 51

Constitution of India, 1950 — Article 227

Citation : AIR 2010 AP 230 : (2010) 5 ALD 234

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : K. Subrahmanyam, for the Appellant;

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—I have heard the learned Counsel appearing for the revision Petitioner. None appears for the Respondent.

2. The revision petition is filed under Article 227 of the Constitution of India challenging the decree and order dated 5-12-2005 passed by the Principal Junior Civil Judge, Bobbili in E.P. No. 51 of 2005 in O.S. No. 50 of 2004.

3. The Respondent having obtained a money decree in O.S. No. 50 of 2004 for an amount of Rs. 39,510/- filed E.P. No. 51 of 2005 for realization of the decretal amount by means of arrest and detention of the revision Petitioner/judgment debtor in civil prison.

4. Before the executing Court, on behalf of the Decree Holder PW-1 was examined and on behalf of the judgment debtor RW1 was examined.

5. On considering the entire evidence on record, the learned executing Court allowed E.P. by ordering the arrest and detention of the judgment debtor in civil prison. Feeling aggrieved, the revision Petitioner/judgment debtor filed the present revision petition.

6. It has been contended on behalf of the revision Petitioner that there was no sufficient evidence adduced by the Respondent/ decree holder before the executing Court in the E.P in proof of the fact that the revision Petitioner has sufficient means to satisfy the decretal amount and has been willfully disobeying to pay the same. Before the executing Court, the judgment debtor admitted that he had obligation to pay the entire decretal amount in one instalment, but he could pay the decretal amount in instalments. It is the version of the Respondent-decree holder that the revision Petitioner is working as Branch Post Master in Mettavalasa Village and getting salary of Rs. 5,000/- per month and also having a tiled house with vacant site worth Rs. 2,00,000/-. It is also his version that the revision Petitioner is doing business in pearls at Bobbili and out of the said business he is getting Rs. 10,000/- per month. Thus, in his affidavit as well as in his evidence, the Respondent testified that the revision Petitioner having sufficient means, intentionally evaded to pay the amount due under the decree.

7. The learned executing Court noticed the fact that the revision Petitioner, in the counter filed by him mentioned that he has no job, but in para 2 of the chief examination as RW.1 he agreed to pay the decretal amount through his salary. The learned executing Court further noticed that in para 3 of the chief examination affidavit he stated that he is eking out his livelihood by doing hard labour. From the evidence of PW.1 as well as RW1, the executing Court rightly arrived at the conclusion that the judgment Debtor is working as Branch Post Master and his salary is Rs. 5,000/- per month. The learned Executing Court also, by applying the provisions of Rule 41 of Order XXI of the CPC held that the burden lies on the judgment debtor to prove his income and his paying capacity to satisfy the decretal amount, but the Respondent did not even file his salary certificate to show that he has no capacity to satisfy the decretal amount. Considering all these facts, the learned executing Court recorded a positive finding that the judgment Debtor having sufficient means, willfully evaded to pay the amount due under the decree and accordingly ordered his detention in civil prison.

8. Having recourse to the provisions of Rules 37 and 51 of Order 21 of the Code of Civil Procedure, the learned Counsel appearing for the revision Petitioner would submit that since it is proved that the revision Petitioner is a salaried employee, he cannot be arrested and detained in civil prison for execution of the money decree obtained by the decree holder and the decree holder can realize the amount by attaching his salary and therefore, the order passed by the executing Court cannot be sustained. Absolutely, there is no force in the contention of the learned Counsel. The decree holder can choose any of the modes of execution available to him and merely because the revision Petitioner is a salaried employee, the argument that the amount can only be realized by attaching his salary, but not by means of arrest and detention in civil prison has no foundation in law.

9. In view of the fact that the finding recorded by the learned executing Court

that the revision Petitioner-judgment debtor has sufficient means to repay the decretal amount, but willfully evaded to pay the same, is based on the evidence forthcoming before him and is in accordance with law, the order passed, being within it's jurisdiction and strictly in accordance with law, this Court is not supposed to interfere with the said finding in exercising it's powers of revision under Article 227 of the Constitution of India.

10. The learned Counsel appearing for the revision Petitioner submits that the revision Petitioner be granted some time to pay the decretal amount. Accordingly, the revision Petitioner is directed to pay the decretal amount within a period of six months from the date of this order.

11. With the above direction, the revision is dismissed. There shall be no order as to costs.