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**(2009) 06 AP CK 0018**  
**In the Andhra Pradesh High Court**  
**Case No : C.R.P. No. 5832 of 2006**

V. Dharmavenamma

APPELLANT

Vs

C. Subrahmanyam Mandadi

RESPONDENT

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**Date of Decision :** 19-06-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 21 Rule 37, Order 21 Rule 38, Order 21 Rule 40, 51

**Citation :** (2009) 5 ALT 462

**Hon'ble Judges :** R. Kantha Rao, J

**Bench :** Single Bench

**Advocate :** K. Surender Raj, for the Appellant; G. Dasaradha Rami Reddy, for the Respondent

**Final Decision :** Allowed

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## Judgement

R. Kantha Rao, J.—This revision petition is filed against the order dated 29.08.2006 passed in E.P. No. 49 of 2003 in O.S. No. 76 of 1999 by the Junior Civil Judge, Nagari.

2. The unsuccessful decree holder is the revision petitioner. She obtained a money decree for an amount of Rs. 54,000/- and filed execution petition against the respondent/judgment debtor under Order 21 Rules 37 and 38 C.P.C. seeking realization of the decretal amount by means of arrest and detention of the respondent in civil prison alleging that having sufficient means to repay the decretal amount, in spite of the request of the decree holder, the respondent has been deliberately refusing to pay the decretal amount. Pursuant to the notice issued by the executing Court, the respondent/judgment debtor made his appearance, filed his counter contending inter alia that he is aged 67 years and has been suffering from old age ailments like asthma, heart disease etc., and he is a small farmer owning meager extent of land and the same is not yielding any income due to draught and has no means to pay the decretal amount.

3. To prove her version before the executing Court, the revision petitioner

examined herself as P.W-1 and marked Exs.A-1 to A-4. On the other hand, in support his defence, the respondent examined himself as R.W-1 and marked Exs.B-1 to B-5.

4. After making an enquiry into the E.P. on merits the executing Court held that since from the evidence adduced by the revision petitioner, it is very well established that the respondent has enough movable and immovable properties, the revision petitioner has to take recourse to the other modes of execution such as proceeding against the properties of the respondent to realize the decretal amount and ultimately dismissed the E.P. with a direction to the revision petitioner to proceed against the property of the respondent to realize the decretal amount.

5. The above mentioned order is impugned in this revision.

6. I have heard the learned Counsel appearing for the revision petitioner/decreed holder as well as the respondent/J.Dr.

7. The learned Counsel appearing for the revision petitioner would submit that it is the prerogative of the decree holder to choose any one of the modes of the execution and the judgment debtor cannot direct the decree holder to choose an appropriate mode of execution, the order passed by the executing Court is contrary to law and is liable to be set aside in this revision.

8. On the other hand, the learned Counsel appearing for the respondent would contend that it is very well established from the evidence adduced by the revision petitioner that the respondent had enough movable and immovable properties and the proper course open to the revision petitioner is to proceed against the properties of the respondent and the executing Court is perfectly justified in dismissing the execution petition, more particularly in view of the old age of the respondent and his ailments.

9. Now the point for consideration in this revision petition is whether the order passed by the executing Court is sustainable in law in the E.P. relating to a decree for payment of money filed by the revision petitioner seeking the arrest and detention of the respondent in civil prison for realization of the decretal amount in dismissing the execution petition and directing the respondent (sic. revision petitioner) to choose the other modes of execution?

10. According to the respondent, he is aged 67 years and he has been suffering from old age ailments like asthma, heart disease etc. Since it is established from the evidence adduced by the revision petitioner that the J.Dr owns and possesses Ac.5.00 cts of dry land and Ac.2.32 cts of wet land besides owning a house and tractor, he cannot be detained in civil prison and the remedy available to the revision petitioner is only to proceed against the assets. Reliance is placed by the respondent on Y. Saratchandra Vs. Lakshminarasimha Finances and Another, wherein the learned single judge of this Court held that when the second respondent/ judgment debtor who is a petty employee drawing a meager salary

came forward to pay the decretal amount by instalments, it is not possible to conclude that there is deliberate negligence on his part in discharging the decretal liability and ordering arrest of J.Dr is not proper when other alternative modes of recovery of decretal amount which are available to the decree holder.

11. On the contrary, it is the contention of the revision petitioner that the respondent never disputed the age mentioned by her as 52 years in the execution petition, he only invented a new story that he is aged 67 years, which is absolutely false and was not the case at any point of time. Regarding this contention, if we peruse the plaint filed in the year 1999, the age of the respondent (defendant) is mentioned as 35 years and the same is not disputed by the respondent. Therefore, the contention urged by the revision petitioner on this aspect can be considered to be true and genuine. Under these circumstances Exs.B-1 to B-5 medical reports and other documents relating to treatment of the respondent, without there being any evidence to substantiate the said documents cannot be accepted. In this case, the respondent alone was examined as R.W-1 and nobody was examined on his behalf.

12. However, the main contention of the respondent is that in view of the authentic evidence forthcoming in this case regarding his owning and possessing enough movable and immovable properties to satisfy the decree passed against him for recovery of money, the remedy available to the revision petitioner is only to proceed against the assets, but she cannot resort to the remedy of seeking the respondent's detention in civil prison to realize the decretal amount.

13. At the hearing of the revision petition, the learned Counsel appearing for the revision petitioner submitted that the revision petitioner is a helpless woman residing in Chennai and it is not possible for her to execute the decree against the properties of the respondent situate in a remote village in Chittoor District. Further, the learned Counsel has strenuously contended that the finding of the executing Court is contrary to the specific provisions relating to execution of money decree by seeking the arrest and detention of judgment debtor in civil prison contained in the Code of Civil Procedure. In support of her contention, she placed reliance on the following decisions:

(i) Gudiwada Munemma v. Jawardhal 2007 (2) ALT 8 wherein the learned single judge of this Court held that the decree holder can choose any mode of execution of the decree available under the Code, the executing Court cannot insist upon him to follow a particular mode. The executing Court having recorded a finding that the J.Dr who has sufficient means to pay the E.P. amount neglected to pay the same committed error in dismissing the E.P. According to the learned single judge, dismissal of E.P. on the ground of availability of alternative remedy of attachment and sale of properties of judgment debtor, is not legal.

(ii) Syed Lalsa v. Karri Jaya Rao 2006 (1) A.P.L.J. 305 wherein another single judge of this Court upheld the finding of the executing Court directing the arrest and detention of the judgment debtor who is an employee in APSRTC drawing

salary of Rs. 7,000/- per month while executing a money decree after recording a clear finding that he had sufficient means to pay the decretal amount but neglected to satisfy the decree. According to the learned judge, the finding of the executing Court cannot be said to be illegal or contrary to law.

14. Before deciding the point assailed in this revision, it is necessary to have a glance at the relevant provisions of the CPC relating to the subject. A combined reading of Rules 37, 38 and 40 of Order XXI indicates that when judgment debtor is brought before the Court after being arrested in execution of a decree for the payment of money the Court shall hold an enquiry affording opportunity to the judgment debtor to show cause as to why he should not be committed to civil prison and upon the conclusion of such enquiry the Court may make an order for detention of the judgment debtor in civil prison subject to the provisions of Section 51 C.P.C.

15. Section 51 C.P.C. contains the modes of execution of decree by the executing Court and one of the modes is by way of arrest and detention of judgment debtor in civil prison. Proviso (b) to Section 51 mandates that where the decree is for payment of money the execution by detention in civil prison shall not be ordered unless it is established that the decree holder (sic. judgment-debtor) having sufficient means to pay the decretal amount refuses or neglects to pay the same or some substantial part thereof.

16. Therefore, the decree holder has to demonstrate in the first instance that the J.Dr has means to pay the decretal amount and nextly that he has with a view to deprive him of the fruits of the decree is either refusing or neglecting to pay the decretal amount or any substantial portion thereof. The Court is also under a duty to afford an opportunity to the judgment debtor to show cause as to why he should not be committed to civil prison and thereafter it has to record its reasons about its satisfaction of the judgment debtor willfully refusing or neglecting to pay the decretal amount in spite of having sufficient means. Section 51 C.P.C. does not state anywhere that the executing Court can compel the decree holder to proceed against the properties of the judgment debtor without resorting to the mode of seeking arrest of the J.Dr and detaining him in civil prison.

17. In this context it is also relevant to refer to Order XXI Rule 11 CPC, which deals with the application for the execution of a decree. Sub-rule 2 (j) reads as follows:

the mode in which the assistance of the Court is required, whether:

- (i) by the delivery of any property specifically decreed;
- (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
- (iii) by the arrest and detention in prison of any person;
- (iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

18. Thus, even from the language of Rule 11 of Order 21, it is quite obvious that the decree holder can choose any one of the modes mentioned in Sub-rule 2(j) of the said rule.

19. The conclusion, therefore, which can be properly reached is that when the law prescribes several modes of execution, the decree holder is at liberty to choose any one of the modes. The J.Dr cannot in any event question the mode of execution. His right is only restricted to the burden required to be discharged by the decree holder and the duty of the Court is to follow the procedure prescribed under law.

20. In the instant case, apparently the respondent/J.Dr did not express his willingness to pay the decretal amount or any part thereof. His contention is only that since by adducing enough evidence, the revision petitioner/decreed holder proved that he had enough movable and immovable properties to satisfy the decree, he has to proceed against the properties without seeking detention in civil prison. If we peruse the contents of the counter filed by the respondent he stated that he is only a small farmer owning meager extent of land, which has not been yielding any income for the last seven years due to draught and therefore he has no means to pay the amount. However, he also contended that he is aged 67 years, suffering from old age ailments like asthma, heart disease etc., and as such cannot be detained in civil prison. On evidence and having regard to the facts and circumstances of the case, it is made clear that the plea taken by the respondent that he is aged 67 years is false and he also failed to establish that he has been suffering from any ailment. The only question thus requires consideration is when the alternative remedies of execution are available to the decree holder, he can choose to execute the decree for payment of money seeking arrest and detention of the judgment debtor in civil prison upon proving the requisite facts.

21. The decision relied upon by the learned Counsel appearing for the respondent referred above Y. Saratchandra (supra), is distinguishable on facts and therefore it is of no help to the respondent. In the case before the learned single judge, the judgment debtor came forward to satisfy the decree in monthly instalments whereas in the instant case the respondent did not offer to pay the decretal amount. The fact that whether the judgment debtor willfully refused or neglected to pay the decretal amount, has to be judged with reference to the pleadings and the evidence available on record.

22. In the instant case, initially the respondent contended in his counter that he is a small farmer owning small extent of land, which is not yielding any income since seven years due to draught conditions and he has no means to pay the decretal amount. Therefore, mainly the E.P. filed by the revision petitioner was sought to be dismissed on the ground that the respondent has no means to pay the decretal amount. This is the specific version of the respondent in his counter.

Whereas it was argued by the learned Counsel appearing for the respondent before the executing Court that since as per the evidence adduced by the decree holder it is made out that the respondent owned and possessed sufficient movable and immovable properties to satisfy the decree, the revision petitioner can only proceed against the properties of the respondent but he cannot seek the arrest and detention of the respondent in civil prison to realize the decretal amount. Thus, from the inconsistent stands taken by the respondent, the only conclusion which can be reached is that he has been willfully and deliberately refusing to pay the decretal amount in spite of having sufficient means. When his plea of no means to pay the decretal amount was falsified by the revision petitioner by adducing sufficient evidence, he turned round and contended before the Court below that the only remedy available to the revision petitioner is to proceed against his properties to recover the E.P. amount.

23. In view of what all stated in the foregoing paragraphs, the revision petitioner has discharged her burden by successfully demonstrating that in spite of having sufficient means to pay the decretal amount, the respondent willfully refused to pay the same. Having regard to the facts and circumstances mentioned herein before and from the conduct of the respondent it is clearly made out that initially he took the plea of no means to pay the decretal amount to avoid the liability under the decree and subsequently when it came to light that he has enough properties to satisfy the decree, he switched over to the contention that since he has enough properties, the revision petitioner has to adopt the other modes of execution by proceeding against his properties, but he cannot seek his detention in civil prison for realization of the decretal amount.

24. From the foregoing discussion with reference to the relevant provisions of the code on the subject, it is thus obvious that the judgment debtor or the Court cannot insist upon the decree holder to choose a particular mode of execution. As such in the instant case, despite the fact that the respondent owns and possesses movable and immovable properties to satisfy the decree, the revision petitioner is not obliged to proceed against the properties of the respondent in execution of the decree. The law laid down in *Gudiwada Munemma (supra)* and *Syed Lalsa (supra)* relied upon by the learned Counsel appearing for the revision petitioner is based on proper interpretation of the relevant provisions of the code relating to the execution of decree for payment of money by means of arrest and detention of the judgment debtor in civil prison. The said two rulings are squarely applicable to the facts of the present case.

25. The finding of the learned Court below that since the respondent/J.Dr has movable and immovable properties, the revision petitioner/decreed holder can very well adopt the other modes of execution such as proceeding against the movable and immovable property of the J.Dr to recover the E.P. amount and the consequent decision rendered thereon by dismissing the E.P. is not only erroneous but wholly illegal.

26. For the foregoing reasons, the order passed by the learned Junior Civil

Judge, Nagari is set aside. The respondent is granted three months time to pay the decretal amount together with interest as indicated in the decree and on his failure to do so, the learned Junior Civil Judge shall proceed to secure the attendance of the respondent and take appropriate steps to execute the decree by means of detaining the respondent in civil prison in accordance with the procedure prescribed under the Code. The revision petition is, therefore, allowed with costs.