
(1998) 4 ALD 145 : (1998) 4 ALT 13 : (1998) 2 APLJ 286 : (1999) 2 CivCC 396

Andhra Pradesh High Court

Case No: C.R.P.No. 2068 of 1997

D.S. Varma

APPELLANT

Vs

Guruju Veera Raghava
Rao

RESPONDENT

Date of Decision: Aug. 12, 1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 37, 51(1), 60

Citation: (1998) 4 ALD 145 : (1998) 4 ALT 13 : (1998) 2 APLJ 286 : (1999) 2 CivCC 396

Hon'ble Judges: V. Bhaskara Rao, J

Bench: Single Bench

Advocate: Mr. Y. Chandrasekhar, for the Appellant; Mr. Subrahmanyam, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

ORDER

1. This Civil Revision Petition is directed against the order dated 12-1-1997 in E.P.No. 18/95 in O.S.No. 142/86 on the file of Principal District

Munsif, Narsapur, dismissing the E.P., on the ground that the decree holder failed to prove that the judgment-debtor having means, refused or

neglected to pay the decretal amount and hence the E.P. for arrest of judgment debtor fails.

2. The decree holder obtained a decree for recovery of Rs.7,500/- in O.S.No.142/86 on the file of Principal District Munsif, Narsapur, and

filed the E.P. under Order XXI Rule 37 C.P.C. for realisation of the decretal amount by the arrest and detention of judgment debtor in civil prison.

It is stated that the judgment-debtor is having a daba-house in the 4th Ward of Narsapur Municipality, that he is a retired Hindi Pandit and is

having cash on hand besides getting pension and hence he is having sufficient means to discharge the decretal debt and he is avoiding to pay the

same. The judgment debtor filed a counter resisting the E.P. He stated that the amount claimed in the E.P. is not correct, that he does not possess

any moveable or immovable properties and he has no means to discharge the E.P. amount. It is further stated that he is aged about sixty two years

and he is suffering from Fits and cannot walk without the support of a stick or umbrella.

3. During the enquiry, the decree holder examined himself as PW1 and judgment-debtor as RW1. Exs.B1 to B6 are marked on behalf of the

judgment-debtor.

4. The learned Munsif scrutinised the evidence of PW1 on one hand and RW1 and Exs.B1 to B6 on the other hand held that the pension of the

judgment-debtor is not liable for attachment, that Exs.B1 and B6 show that he is not hale and healthy and that Exs.B2 to B5 establish that the house

shown in the E.P. schedule belongs to the wife of the judgment debtor. The learned Munsif has accordingly held that the decree holder has failed to

prove that the judgment debtor having sufficient means refused or neglected to pay the decretal amount and hence he is not liable to be arrested.

The decree holder has challenged the order in this Revision Petition.

5. Sri Y. Chandrasekhar, learned Counsel for the revision petitioner has traced the history of the case stating that the judgment-debtor herein was

a tenant in the house of the decree-holder and he never paid any rent and hence the decree-holder was driven to the Court for realisation of the

arrears of the rent and the judgment debtor herein raised several contentions including denial of title and dragged his feet for a long span of six

years. As against the claim of Rs.9,618.50 ps. (being rent of Rs.7,500/- and interest of Rs.2,118.50 ps.) the suit was decreed for a monthly rent of

Rs.250/- and subsequent interest at 6% per annum from the date of the suit. The matter was carried in appeal and the appellate Court allowed the

appeal in part and reduced the rent to Rs.60/- p.m. It is then stated that the judgment debtor who is a Hindi Teacher in Taylor's High School

retired from service on 31-12-1992 and he has fraudulently transferred all his assets either to his wife or to daughters and now he is pretending that

he is only a pensioner and he has no means to satisfy the decree. Sri Chandrasekhar contended that the judgment debtor was in service on the date

of the decree and hence he has had means to satisfy a substantial part of the decretal amount as envisaged by proviso (b) to Section 51 C.P.C. He

also argued that a warrant of arrest should, have been issued straightaway to the judgment-debtor and the enquiry contemplated u/s 51 C.P.C.

ought to have been held after the judgment debtor was arrested and produced before the Court and before passing the detention order as sought

for and hence the learned Munsif failed to exercise the jurisdiction vested in him and did not issue an arrest warrant and the entire enquiry can be

said to have been vitiated. He relied on *Namachivaya Mudaliar and Another Vs. P.J.A. Manickavelu and Co.*, and *P.G. Ranganatha Padayachi*

Vs. The Mayavaram Financial Corporation Ltd., . On the other hand, Sri S.V.R. Subramanyam, learned Counsel for the respondent judgment

debtor contended that inspite of sufficient opportunity being given to the decree-holder no evidence could be produced to show that the judgment

debtor has any means to pay the decretal amount except the pension which is exempt from attachment u/s 60(g) C.P.C. and that therefore the

lower Court is justified in dismissing the E.P.

6. Undoubtedly, this case can be quoted as a classic examples of laws" delays. It is strange that a suit of this nature was pending for six years and

ultimately when the fruits of the decree are sought to be recovered the decree holder is turned down with an empty bowl. Be that as it may.

7. A look at Proviso (b) to Section 51 C.P.C. is necessary to understand the contentions of Sri Chandrasekhar.

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part

thereof and refuses or neglects or has refused or neglected to pay the same, or""

8. Sri Chandrasekhar stated that the decree was passed on 15-6-1992, on which date the judgment-debtor was in service. The salary particulars

are, however, not available. In any case, a portion of the salary was available for attachment as on the date of the decree. In my considered view,

the words "has had on the date of the decree" denote the capacity of the judgment debtor as on the date of the decree. That is why, the above

provision contemplates that "the judgment-debtor has the means" which denote the means in presenti and also that the judgment-debtor "has had

since the date of the decree the means" which denote that he had means in the past and since the date of the decree. A perusal of the impugned

order does not show that the learned Munsif had applied his mind to this aspect of the matter and he failed to enquire into the means or earning

capacity of the judgment-debtor as on the date of the decree and whether he had sufficient means since the date of the decree till he retired to pay

the decretal amount or substantial portion thereof. Thus, there is error of exercise of jurisdiction vested in the learned Munsif.

9. In this context, it is seen from the evidence on record that the judgment debtor has a telephone facility. His case is that the telephone was

installed by his daughters and they are footing the telephone bill. I think that this is a fallacious contention. Neither a daughter is examined nor a

telephone bill showing the payment by one of the daughters is filed. It may be borne in mind that in the recent past the Government of India

formulated four requirements to render an individual liable to file an income tax return and a telephone connection is one of them. It is a well-known

fact that a telephone is a requirement of person having sufficient means. That apart, the lower Court does not appear to have paid any serious

attention to the assertions of decree holder that the house shown in the E.P. Schedule belongs to judgment-debtor. It is no doubt true that the

documents Exs.B2 to B5 contain the name of his wife but there is no material to establish her source of income. It is merely stated by the judgment

debtor that she purchased the plot from out of her sthridhana or constructed the house with her sthridhana but that is not enough. There must be

evidence to establish her source of income if it is independent income or if she has any property of her own or if her parents had gifted any

property to her towards Pasupit Kumlaima. On die contrary, the period of construction indicated by the above documents shows that it was during

the fag end of the service or immediately after retirement of the judgment-debtor. Hence, it is open to the Court to infer that the judgment-debtor"s

terminal benefits or anticipated terminal benefits have been invested to construct the above house. I am fortified by V.P. Madhavan Nambiar Vs.

Chaldean Syrian Bank Ltd. and Another, for the above approach.

10. The other contention of Sri Chandrasekhar is that there is a distinction between issue of warrant of arrest and order of detention in civil prison

and the enquiry envisaged in Section 51 C.P.C. has to take place after issue of arrest warrant and before passing die order of detention to the civil

prison. He is armed with two judgments of Madras High Court cited (supra). In die judgment cited (supra) it is held,

Powers of Court to enforce execution -The requirement prescribed under the proviso to Section 51 is not applicable before an order of arrest is

made, but is applicable only when the person is brought before the Court, or arrested and produced before the Court and the Court is ordering the

committal of the judgment-debtor to civil prison.

A Division Bench of Madras High Court has also expressed the same view in the judgment cited (supra), and it is held,

The order of arrest of the judgment debtor passed by the executing Court without giving a finding regarding the means of the judgment debtor to

pass the decree amount is not one without jurisdiction. The executing Court is required to go into the means of the judgment debtor only after he is

arrested and brought to Court and before deciding whether he has to be committed to prison or not in execution of the decree.

11. In view of the above authorities, I have to hold that the enquiry held by the learned Munsif before issuing the warrant of arrest is uncalled for

and the same is vitiated and is liable to be set aside.

12. The revision petition is, therefore, merited and it is accordingly allowed and the impugned order is set aside. The matter is remitted to the lower

Court with a direction to issue warrant of arrest against the judgment debtor and to proceed with the enquiry envisaged by Section 51 C.P.C.

afresh. He is also directed to enquire into the earning capacity or salary of the judgment-debtor as on the date of the decree and to decide as to

how much is exempt from attachment u/s 60 C.P.C. and whether the balance, if any, can be said to be sufficient means to satisfy the decree or

substantial portion thereof. Having regard to the enormous delay in disposal of the suit and in view of the peculiar circumstances, in which the

matter is being remitted, the learned Munsif is directed to take urgent steps with all possible speed at his command. Costs will abide by the result

of the E.P.