

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO.220 OF 2023

ORDER:

The present revision is filed aggrieved by the orders passed in E.P.No.32 of 2020 in O.S.No.33 of 2018, dated 04.01.2023, by the learned Senior Civil Judge, Pithapuram.

2. The Petitioner herein is Judgment Debtor and the Respondent is the Decree Holder.

3. The Respondent/D.Hr filed suit *vide* O.S.No.33 of 2018 on the file of Senior Civil Judge, Pithapuram, for recovery of money. The said suit was decreed on 21.02.2020. The Respondent/D.Hr filed the present E.P.No.32 of 2020 on the file of Senior Civil Judge, Pithapuram, under Order 21 Rule 37 C.P.C for recovery of decretal amount to a tune of Rs.14,29,358/- with interest, failing which by sending him to Civil Prison.

4. The case of Respondent/D.Hr before the executing court is that in spite of passing the decree, the Petitioner/J.Dr purposefully evading to pay that amount as in terms of decree. As such, filed E.P. under Order 21 Rule 37 C.P.C. for recovery of decretal amount and for issuance of arrest warrant, in the event if he failed to pay send him to

civil prison under Section 55 C.P.C. in order to enable him to realize the decretal amount with subsequent interest.

5. To the said application, the Petitioner/J.Dr fled his counter stating that, he is working as municipal employee in Municipal Office, Tuni, as Water Operator and herein suffering from lack of means as his entire salary has been attached by different courts by way of salary attachments, and knowing pretty well about the same, the D.Hr intentionally filed the present E.P. for his arrest and in the said circumstances, if the Petitioner/J.Dr is arrested, the entire family will be on the roads and there is no willful negligence on his part to avoid the decree passed in favour of the D.Hr, and accordingly, prayed for dismissal of the application.

6. The court below, after conducting enquiry, has allowed the E.P. whereby ordered arrest of J.Dr under Order 21 Rule 37 C.P.C. Against which, the present revision is filed.

7. Heard Sri G.Venkata Subba Raju, learned counsel for the Petitioner/J.Dr and Sri P.Vivek, learned counsel for the respondent/D.Hr.

8. Learned counsel for the Petitioner, in elaboration to what has been stated in the grounds contended that, except the salary, the J.Dr

has no other source of income or means to discharge the decretal amount and there is no willful negligence on his part to evade the decretal amount. Though the D.Hr failed to prove that the Petitioner/J.Dr is having sufficient means, the court below has allowed the E.P. and ordered arrest. The learned counsel for the Petitioner/J.Dr further submitted that, the court below having observed that the decree holder has no personal knowledge about the properties of J.Dr and details of his alleged salary attachments, the court below ordered his arrest, and drawn the attention of this court to the said observations made by the executing court in the impugned order. Further, the PW-1/D.Hr himself has admitted in his evidence that there is attachment of the petitioner's salary in E.P.No.18 of 2019. Further, learned counsel for the petitioner submitted that while ordering arrest, the court below has to specify the period of detention in its order. But, in the present case, the execution court failed to mention the period of detention, which is contrary to the provisions envisaged under Civil Procedure Code and also to the settled principles of law. Learned counsel for the petitioner submitted that when the D.Hr has knowledge about the salary that is being drawn by the Petitioner/J.Dr instead of going on that salary, filed the present execution application ordering arrest of the J.Dr. As such, the said E.P. is not at all maintainable and further when there is no cogent evidence to show that the J.Dr is

having sufficient means and purposefully evading to pay the said decretal amount, ordering arrest is unsustainable and it is contrary to the settled principles of law and draw the attention of this court to **JOLLY GEORGE VARGHESE Vs. THE BANK OF COCHIN** reported in **AIR 1980 SC 470**. Learned counsel for the petitioner also relied on the judgment of this Court in the case of **T.DORASWAMY REDDY Vs. K.KODANDA NAIDU** (CRP.No.1296 of 1990, dated 6.12.1996) and **RAGHAVARAPU NAGESWARA RAO Vs. TENNETI VENKATA LAKSHMI NARAYANA** reported in **1997 (6) ALT 762**, and accordingly, prayed to allow the revision petition.

9. Learned counsel for the Respondent/D.Hr contended that the court below cannot insist upon the decree holder to choose a particular mode of execution and it is the prerogative of the decree holder to choose his mode of execution and in the present case, the E.P. has been filed for order of arrest. The learned counsel further contended that, the salary particulars before the court below, is sufficient to show that the decree holder is having sufficient means and as such court below has rightly allowed the execution petition. In support of his contention, he relied upon the judgment of this Court in the case of **V.DHARMAVENAMMA Vs. C.SUBRAHMANYAM MANDADI** reported in **(2009) 5 ALD 487**. He also relied upon the judgment of

this Court in the case of **SYED LAISA Vs. KARRI JAYA RAO** reported in **(2006) 1 APLJ 305 (AP)** and contended that, wherein this Court has held that because the JDR is an employee, the execution of his arrest and detention in prison cannot be held as unwarranted, and accordingly, prayed to dismiss the revision.

10. Perused the record.

11. The decree has been passed in O.S.No.33 of 2018 against the Petitioner/J.Dr directing him to pay an amount of Rs.11,69,000/- with interest. In order to execute the said decree, the Respondent/D.Hr filed E.P.No.32 of 2020 on the file of Senior Civil Judge, Pithapuram, under Order 21 Rule 37 C.P.C. The court below has allowed the said E.P. stating that the D.HR has proved the means of JDR and he did not pay decretal amount and ordered his arrest.

12. The contention of the Petitioner/J.Dr that the court below has observed that the decree holder has stated that he has no personal knowledge about the properties of PW-1, but the court below has taken into consideration the pay slips so placed on record. It is his further contention that the court below has to specify the period of detention as per the provisions envisaged under Order 21 Rule 37 C.P.C, this is not the stage to mention the period of detention. When

the Respondent/D.Hr has admitted about the other attachments of the petitioner/J.Dr attachment, the court below has not taken due note of the said admission. Particularly when the salary of the Petitioner/J.Dr is available, for attachment under what reasons the D.Hr has filed the E.P. for arrest was also not dealt by the court below. The judgments relied on by the Respondent/D.Hr no doubt is the settled principle of law where the D.Hr can choose his mode of execution. Further, the judgments relied on by the Petitioner/J.Dr that the period of detention should be mentioned, is also a settled principle of law and there cannot be any doubt in that, but as stated above that stage has not been reached in the present case. The court below ought to have dealt with the aspect whether the salary can be treated as sufficient means in order to order arrest of the J.Dr.

13. On perusal of record and impugned order, this Court noticed that no investigation has been made by the executing Court regarding the current ability of the J.Dr to clear off the debt or his *malafide* refusal, if any, to discharge debt. In absence of the same, the question is whether under such circumstances the personal freedom of J.Dr can be held in ransom until repayment of debt.

14. The law is also very clear that, if J.Dr once had the means but now has not, or if he has money now on which there are pressing

claims it is violative of Article-21 to arrest and confine him jail so as to *coerce* him into payment.

15. In **E.N.SATYANARAYANA Vs. SMT.CHOWDAMMA** reported in **(2009) 4 ALD 666**, by relying on the judgment of the Hon'ble Apex Court in the case of **JOLLY GEORGE VARGHESE Vs. THE BANK OF COCHIN** reported in **AIR 1980 SC 470** has held that, the Courts are expected to be cautious while making order of arrest in execution of the decree since it involves personal liberty and it is necessary for the Courts to examine whether other modes of recovery are available to the Decree Holder and whether it is absolutely necessary to order arrest for recovery of the decretal amount.

16. In the present case, such exercise has not been done by the court below while allowing the E.P. Filed by the Respondent/D.Hr. In these circumstances, this Court is inclined to interfere with the order passed by the execution court, which is impugned in the present C.R.P.

17. Accordingly, the impugned order under revision is hereby set-aside and the C.R.P. is allowed and the matter is remitted back to executing Court, with a direction to the court below to reconsider the E.P.No.32 of 2020 in O.S.No.33 of 2018 on the file of Senior Civil Judge, Pithapuram, after making an enquiry in the light of observations made above and pass appropriate orders afresh in accordance with

law. The said exercise shall be done as expeditiously as possible, within a period of three (03) months from the date of receipt of the order.

There shall be no order as to costs.

Miscellaneous Applications, pending if any, shall stand closed.

3rd March, 2023

CVD/HS

JUSTICE RAVI CHEEMALAPATI

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION No.220 OF 2023

Date: 03.03.2023

CVD/HS