

Renukaiah Vs. Nagendrappa

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Court : Karnataka

Decided On : Aug-20-1998

Reported in : 1999(1)KarLJ213

Judge : Hari Nath Tilhari, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 51 and 115; [Constitution of India](#) - Article 21

Appeal No. : Civil Revision Petition No. 2540 of 1994

Appellant : Renukaiah

Respondent : Nagendrappa

Advocate for Pet/Ap. : Sri K.G. Sadashivaiah, Adv.

Judgement :

ORDER

1. This revision petition arises from the order dated 18-7-1994 passed in Ex. Petition No. 210 of 1993 on the file of the Munsiff, Tarikere, Chikmagalur District.

The order reads as under:

'18-7-1994:

Decree-holder by CSS/CAS

Judgment-debtor by B.K.

Steps

Sri B.K. offered Rs. 800/-

Sri CSS for CAS reports

the receipt of Rs. 800/-

EPS for Rs. 800/-. A.N. to

judgment-debtor served on his wife.

Held sufficient. Issue arrest

warrant to judgment-debtor

Call on 27-8. . .'

2. Aggrieved from this order, whereby the Execution Court had ordered issuance of arrest warrant against the judgment-debtor, the judgment-debtor has come up in revision under Section 115 of the CPC.

3. I have heard Sri K.G. Sadashivaiah, learned Counsel appearing for the revision petitioner. The decree-holder has been though served, he has not put in appearance.

4. It has been urged on behalf of the revision petitioner, the Court below is wrong in issuing arrest warrant, particularly in view of the fact that the learned Munsiff did not apply his mind to Section 51 of the CPC and especially to the proviso to Section 51. He contended that no arrest warrant could be issued unless the reasons are recorded in writing by the Court holding that he is satisfied about either of the things i.e., that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree: (a) is likely to abscond or leave the local limits of the jurisdiction of the Court, or (b) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or (c) committed any other act of bad faith in

relation to his property, or he 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 that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account. Further, the learned Counsel contended that the order dated 18-7-1994 is a stereotype and it does not state that the Execution Court has satisfied itself, either of the condition precedents under the proviso to Section 51 of the CPC and as such the order for issuing arrest warrant is against the provisions contained in Section 51 and as such it is illegal, without jurisdiction and arbitrary. It runs counter to Article 21 of the Constitution - No citizen can be deprived of his fundamental rights of life and liberty except in accordance with the procedure established by law. The judgment-debtor has paid a sum of Rs. 1,600/- at the rate of Rs. 800/- per month, which the decree-holder has accepted. According to the learned Counsel, there was no intention on the part of the judgment-debtor in not paying the decretal amount, nor was there any intention to delay the payment.

5. The learned Counsel for the petitioner further pointed out that when the revision petition was pending, this Court has directed the judgment-debtor to pay a sum of Rs. 800/- per month during pendency of the civil revision while granting stay of arrest warrant, and the judgment-debtor has been making such payment every month as ordered by the Court.

6. I have applied my mind to these contentions. Prima facie, the order of the Execution Court cannot be sustained, as it is illegal and arbitrary. The notice of arrest (A.N.) had been served on the wife of the judgment-debtor and that has been, no doubt, held sufficient. But the Court below, it appears, has not applied its mind to the question whether any of the conditions made in the proviso to Section 51 of the CPC have been established satisfactorily before issuing the arrest warrant. Section 51 of the CPC requires the Court to pass a reasoned speaking order, giving reasons as to how it was satisfied, before the arrest warrant is issued, that means, question is whether he was applied his mind and followed clauses (a) to (c) of the proviso to Section 51. Since the Execution Court has not followed the requirement of Section 51 and clauses (a) to (c) of the proviso thereunder, the Execution Court could not have passed or issued order for

issuance of arrest warrant and as such that order cannot be held to have been passed in exercise of its power under Section 51 of the CPC or in accordance with the procedure prescribed or established by law, so it is illegal, null and void. No person should be deprived of his liberty except in accordance with the procedure prescribed or established by law in view of Article 21 of the Constitution. In the present case there is no compliance with the requirements of law, i.e., Section 51 of the CPC and its proviso. The fundamental right and liberty are very important and when there is failure on the part of the Execution Court to follow the mandate of law while passing the impugned order of issuance warrant of arrest of the judgment-debtor, the said order dated 18-7-1994 cannot be sustained and it is liable to be set aside as the order is violative of Section 51 (proviso) of the CPC and Article 21 of the Constitution.

7. In the result, this revision petition is allowed herewith and the impugned order dated 18-7-1994 passed in Ex. Case No. 210 of 1993 is hereby set aside. The Execution Court is directed to consider the matter judiciously and in accordance with the law, after taking into consideration the deposits of amount made by the judgment-debtor.