

C.A. Sattar Vs. L.C. Ayub

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Court : Andhra Pradesh

Decided On : Sep-26-1997

Reported in : 1997(6)ALT730

Judge : C.V.N. Sastri, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 37, 37(1) and 40;
[Constitution of India](#) - Article 21

Appeal No. : Civil Revision Petition No. 2425 of 1997

Appellant : C.A. Sattar

Respondent : L.C. Ayub

Advocate for Def. : P. Venkat Reddy, Adv.

Advocate for Pet/Ap. : Syed Shareef Ahmed, Adv.

Judgement :

ORDER

C.V.N. Sastri, J.

1. Heard learned Counsel for both parties.

2. This revision is directed against an order dismissing an application purported to be filed under Order 21 Rule 106 of C.P.C. to recall the arrest warrant issued

against the petitioner-judgment debtor on 31-12-1996. The grievance of the petitioner is that his arrest was straightaway ordered by dispensing with the notice under Order 21 Rule 37 C.P.C. and without conducting any enquiry with regard to his means to pay the decretal amount as required under law. The Lower Court has dismissed the application and refused to recall the arrest warrant observing that 'Rule 106 of Order 21 C.P.C. does not attract the prayer of the petitioner' but directed that the petitioner has to appear before the Court and has to give undertaking to pay the E.P. amount showing his bona fides.

3. Learned Counsel for respondent has contended that the petitioner is a retired teacher and has ample means to pay the decretal amount and he is wilfully evading to pay and as the Court was satisfied that the petitioner is likely to abscond or leave the local limits of the jurisdiction of the Court with a view to delay the execution of the decree, the Court has dispensed with the notice under Order 21 Rule 37(1) as provided in the proviso to the said rule and therefore the order does not call for any interference. It is also contended that the petitioner has not challenged the original order dated 31-12-1996.

4. It is elementary and axiomatic that a person cannot be arrested and sent to jail in the execution of a decree for realisation of money without giving him an opportunity and without conducting an enquiry as to his means. As held by the Supreme Court in Jolly George Varghese and Anr.v. The Bank of Cochin, : [1980]2SCR913 that mere inability to pay the decretal amount cannot be a ground to sending a person to jail in violation of his fundamental right guaranteed under Article 21 of the [Constitution of India](#). Even in a case where notice under Rule 37(1) of Order 21 is dispensed with, Rule 40 of Order 21 mandates that when the judgment debtor appears before the Court or is brought before the Court after being arrested, the Court shall proceed to hear the decree holder and take all such evidence as may be produced in support of his execution and shall then give the judgment debtor an opportunity of showing cause why he should not be committed to the civil prison.

5. This Civil Revision Petition is therefore disposed of directing the Lower Court to conduct an enquiry as provided in Rule 40 of Order 21 before committing the

petitioner to Civil prison. The petitioner shall appear before the lower Court on 14-10-1997. The Lower Court shall give the petitioner an opportunity to file his counter to the E.P. and thereafter fix a date for enquiry and after conducting a proper enquiry the Lower Court shall pass appropriate orders in accordance with law within two months from the date of receipt of copy of this order. Meanwhile the petitioner shall not be arrested.

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