

**Gudiwada Munemma Vs. Jawardhal**

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**SooperKanoon Citation :** [sooperkanoon.com/441106](http://sooperkanoon.com/441106)

**Court :** Andhra Pradesh

**Decided On :** Aug-29-2006

**Reported in :** 2006(6)ALT587

**Judge :** B. Seshasayana Reddy, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 51 and 58 - Order 21, Rule 37

**Appeal No. :** C.R.P. No. 2614 of 2005

**Appellant :** Gudiwada Munemma

**Respondent :** Jawardhal

**Advocate for Def. :** Rajendra Bussa, Adv.

**Advocate for Pet/Ap. :** T.C. Krishnan, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**B. Seshasayana Reddy, J.**

1. This civil revision petition has been directed against the order dated 3.3.2005 passed in O.E.P. No. 423 of 2003 in O.S. No. 684 of 2002 on the file of the 1st

Additional Junior Civil Judge, Chittoor, whereby and where under the learned Additional Junior Civil Judge dismissed the execution petition filed by the petitioner/decreed-holder seeking arrest and detention of the respondent/judgment-debtor in civil prison for realization of decretal amount.

2. The petitioner herein is the decree-holder and the respondent herein is the judgment-debtor. The petitioner obtained a money decree against the respondent in O.S. No. 684 of 2002 to recover Rs. 18,920/-with costs and subsequent interest from 17.7.2003. He filed E.P. No. 423 of 2003 and sought for arrest and detention of the judgment-debtor in civil prison. He filed his affidavit along with the execution petition stating that the respondent/judgment-debtor is a Talari getting monthly salary of Rs. 2,000/-and also owning landed properties yielding an annual income of Rs. 40,000/-. It is further averred that the respondent/judgment-debtor is doing seasonal business and thereby getting Rs. 5,000/- per month. Thus the petitioner/decreed-holder stated that the respondent/judgment-debtor having sufficient means neglected to pay the decretal amount.

3. The respondent/judgment-debtor entered appearance and filed counter resisting the execution petition. He took the plea that he has no means to pay the decretal amount.

4. The petitioner/decreed-holder placed on record his affidavit as examination in chief and marked Ex. A-1 certified copy of the I-B Register to show that the respondent/judgment-debtor possessed lands apart from getting monthly income of Rs. 2,000/-. The respondent/ judgment-debtor did not choose to cross-examine the petitioner/decreed-holder.

5. The executing Court, on considering the evidence brought on record by the petitioner/decreed-holder and on hearing the counsel for both the parties, recorded a finding that the respondent/judgment-debtor has sufficient means to pay the E.P. amount. However, executing Court dismissed the E.P. on the ground that the petitioner/decreed-holder has alternative remedy of getting the properties of the respondent/judgment-debtor attached for realization of the E.P. amount. The order passed by the executing Court is under challenge in this civil revision petition.

6. Heard learned Counsel appearing for the petitioner/decreed-holder and learned Counsel appearing for the respondent/judgment-debtor.

7. Learned Counsel appearing for the petitioner/decreed-holder submits that arrest and detention of the judgment-debtor is one of the several modes of the execution to recover the decretal amount and it is for the decree-holder to choose the mode of execution of his decree and it is no part of the duty of the executing Court to lay down or prescribe the mode of execution to be followed by the decree-holder. A further submission has been made that the executing Court having recorded a finding that the decree-holder proved sufficient means of the judgment-debtor ought not to have dismissed the E.P. In support of his submission, he placed reliance on the decision of this Court in *Guvvala Sudhakara Reddy v. Katamreddy Venugopala Reddy* : 2006(2)ALT632 .

8. Learned Counsel appearing for the respondent/judgment-debtor submits that the respondent/judgment-debtor is an employee, and therefore, the petitioner/decreed-holder ought not to have resorted to the arrest of the judgment-debtor and he should have proceeded against the salary or the properties of the respondent/judgment-debtor. In support of his contention, he placed reliance on the decision of this Court in *A. Sambasiva Rao v. Rudru Bhaskara Rao* 2003 (3) L.S. 119.

9. In *A. Sambasiva Rao's* case (2 supra) there appears to be no finding that the respondent therein has sufficient means to discharge the decretal debt. Therefore, the said decision has no application to the facts of the case on hand.

10. Section 51 C.P.C. deals with procedure in execution and powers of the Court to enforce execution and various modes of execution have been detailed in Section 51 C.P.C. It is profitable to refer Section 51 C.P.C. and it is thus:

Section 51. Powers of Court to enforce execution:-Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison (for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that section);

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree , -

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(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

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation:- In the calculation of the means of the judgment-debtor for the purposes of Clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

11. Section 58 CPC deals with the period of detention in civil prison in execution of decree.

12. It is explicit from Section 51 C.P.C. that arrest and detention is one of the modes of execution of the decree. To seek arrest of the judgment-debtor for realization of the amount due under the decree, the decree-holder has to satisfy that the judgment-debtor having sufficient means has neglected to pay the decretal amount.

13. Order 21, Rule 37 CPC contemplates issuance of show cause notice before the arrest warrant being issued.

37. Discretionary power to permit judgment-debtor to show cause against detention in prison. - (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court (shall), instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

(Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.)

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

14. There is no procedural irregularity in the case on hand. The respondent/judgment-debtor has been put on notice as required under Order 21, Rule 37 CPC. Indeed, the petitioner/decreed-holder has placed on record his affidavit in examination in chief and marked certified copy of No. I-B Register as Ex. A-1. The respondent/judgment-debtor did not choose to cross-examine the

petitioner/decreed-holder and there by the means of the judgment-debtor spoken by decreed-holder to satisfy the decretal amount shall stand proved. The executing Court after going through the material brought on record, made the following observation:

9. With regard to the means of the J. Dr., the D. Hr., filed his affidavit along with the E.P. proforma stating that the J. Dr., is doing seasonal business and also having lands and getting monthly income of Rs. 5,000/- from his seasonal business and also Rs. 7,000/- from his lands, apart from that he is also working as Thalari and getting a monthly salary of Rs.2,000/-. He also stated the same in his affidavit of evidence in-chief filed during the course of enquiry. But, the J. Dr., did not choose to cross-examine the P.W. 1 in spite of giving number of adjournments for his cross-examination to P.W. 1. Therefore, in view of the said reasons even though the J. Dr., filed his counter stating that he has no income to pay the E.P. amount, but in view of his failure to challenge the allegations made by the D. Hr., by way of his cross-examination to P.W. 1 it appears that the allegations made by the D. Hr., in respect of the means of the J. Dr., are remained unchallenged and they have been taken as admitted by the J. Dr.

15. The executing Court having recorded a finding that the judgment-debtor has sufficient means to discharge the decretal amount, committed error in dismissing the execution petition. Therefore, the order impugned in the civil revision petition is not legal and proper and the same is liable to be set aside.

16. At this stage, the learned Counsel appearing for the respondent/judgment-debtor seeks time for payment of the decretal amount.

17. In view of the submission made by the learned Counsel eight weeks time from today is granted to the respondent/judgment-debtor to pay the E.P. amount, failing which, the executing Court shall issue arrest warrant against the respondent/judgment-debtor.

18. Accordingly, this civil revision petition is allowed. No costs.