

**K. Devendra Mohan Vs. M/S. Sic Corporation (Regd.), Rep. by Its Partner P. Jaya Chandra Reddy and Another**

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**Court :** Andhra Pradesh

**Decided On :** Aug-02-2012

**Judge :** N. Ravi Shankar

**Appeal No. :** Civil Revision Petition Nos.5768 of 2009 & 391 of 2010

**Appellant :** K. Devendra Mohan

**Respondent :** M/S. Sic Corporation (Regd.), Rep. by Its Partner P. Jaya Chandra Reddy and Another

**Advocate for Def. :** Sri. T.Janardhan Rao

**Advocate for Pet/Ap. :** Sri. C.Ram Prasad

**Judgement :**

Common Order:

Heard Sri C.Ram Prasad, learned counsel for the petitioner and Sri T.Janardhan Rao, learned counsel for the respondent.

2. The judgment debtor by name K.Devendra Mohan is the petitioner in both these revisions, though they arise out of different execution proceedings in two suits. C.R.P.No.5768 of 2009 is filed against the order dated 29.09.2009 in C.F.No.9711

of 2009 in E.P.No.243 of 2001 in O.S.No.1222 of 1999 on the file of the court of Principal Junior Civil Judge, Chittoor (executing court) and C.R.P.No.391 of 2010 is filed against the order dated 04.11.2009 in E.A.No.85 of 2009 in O.E.P.No.250 of 2001 in O.S.No.1223 of 1999 on the file of the court of I Additional Junior Civil Judge, Chittoor (executing court). The point raised in both is one and the same. Hence, they can be disposed of by this common order.

3. The petitioner suffered a money decree in O.S.No.1223 of 1999 on the file of the court of I Additional Junior Civil Judge, Chittoor. The plaintiff in that suit is M/s.SIC Corporation, represented by its partner P.Jaya Chandra Reddy. After obtaining the decree, the plaintiff in that suit filed O.E.P.No.250 of 2001 seeking recovery of the decretal amount by arrest and detention of the petitioner herein (hereinafterwards referred to as judgment debtor). The execution was ordered in that E.P. on 01.11.2002 directing the judgment debtor to pay the decretal amount within two months from the date of that order and in default of the same, the execution court directed issue of arrest warrant for detention of the judgment debtor in civil prison. It is represented that this order was confirmed in CRP.No.9 of 2003 by this court.

4. Then coming to the other matter, here again the judgment debtor suffered a money decree in O.S.No.1222 of 2009 on the file of the trial court. The plaintiff in that suit is M/s.Nagarjuna Financiers, represented by its partner P.Govinda Reddy. After obtaining the decree, the plaintiff in that suit filed O.E.P.No.243 of 2001 seeking recovery of the decretal amount by arrest and detention of the judgment debtor. In that E.P., execution was ordered on 01.11.2002 directing the judgment debtor to pay the decretal amount within two months from the date of that order and in default of the same, the executing court directed issue of arrest warrant for detention of the judgment debtor in civil prison. It is represented that this order was confirmed in CRP.No.2 of 2003 by this court.

5. The judgment debtor did not admittedly comply with the earlier orders passed in the E.Ps. The record placed before me would show that the judgment debtor again filed E.A.No.85 of 2009 in O.E.P.No.250 of 2001 and an application C.F.No.9711 of 2009 in E.P.No.243 of 2001 seeking leave of the executing court to participate

in the E.P. proceedings and give him an opportunity to show that he has no means to pay the decree debts in both the E.Ps. and consequently he should not be detained in civil prison.

6. The executing court took up E.A.No.85 of 2009 and after hearing both sides, it dismissed it by its order dated 04.11.2009. Then with regard to the application in C.F.No.9711 of 2009, that was taken up by executing court concerned and it was dismissed by him on 29.09.2009. A perusal of both the orders would show that both the courts below, in substance, dismissed the aforesaid applications on the ground that the judgment debtor has already filed revisions against the earlier orders directing his detention in the E.Ps. and was unsuccessful in this court and consequently the aforesaid applications were not maintainable as the matters have already been decided and confirmed by this court.

7. In these revisions which are filed by the judgment debtor separately against aforesaid two orders Sri Ram Prasad argued that according to the rule laid down in Order XXI Rule 40 and also Section 51 of the CPC, the courts below were bound to consider his request for his participation in the E.P. proceedings and also to demonstrate his helplessness in paying the decree debts.

8. On the other hand, Sri Janardhan Rao pointed out as the matters were already decided by the executing courts and their orders were confirmed by this court, it was not open for the judgment debtor once again to re-agitate that issue. However, Sri Ram Prasad relied upon a decision of Supreme Court given in **Jolly George Varghese V. The Bank of Cochin** (AIR 1980 SUPREME COURT 470) and a decision of this court given in **SeelamRamadevi V. Gadiraju Yanadi Raju** (2008 (4) ALD 366) and argued that the judgment debtor should be given an opportunity to show that his non-payment of the decree debts are not wonton and because of his helplessness only and his insolvent circumstances. It is true that going by the Order XXI Rule 40 and also Section 51 of the CPC, a judgment debtor has to be heard in the matter in an E.P. for arrest regarding his means to pay it. There is no dispute about this aspect.

9. It should however be noted that in the earlier order dated 01.11.2002 passed in O.E.P.No.250 of 2001 and order dated 29.09.2009 passed in O.E.P.No.243 of

2001, the executing courts have already considered the pleas of the judgment debtor regarding his means. It is also seen that the witnesses examined on behalf of decree holders in above E.Ps. were also cross-examined by the judgment debtor. The case of the judgment debtor was negatived in the earlier E.Ps. and the same were confirmed by this court in the corresponding revisions which are already referred to supra. It is thus clear that by the applications now made before the executing courts which were dismissed, he has again tried to reagitate the issue which cannot be permitted at all, as the matter is closed and even the principle of res judicata applies here. In the above circumstances and for the reasons afore said, I am of the opinion that there are no merits in both the revisions.

10. Sri Ram Prasad however brought to my notice that pursuant to the interim orders granted by this court in these revisions, the judgment debtor has deposited half of the decretal amount in each of the E.Ps. and he has to still deposit the remaining half of the amount. He requested that the judgment debtor may be given three months time from today to deposit the balance amount. Having regard to the amounts and the pleas expressed by the judgment debtor's counsel, I am of the opinion that two months time would be reasonable. Accordingly, the judgment debtor is granted further time of two months from today to deposit balance amounts in both the E.Ps. in the concerned executing courts, failing which the orders directing detention of the judgment debtor in civil prison shall be enforced. On such deposit, the respective decree holders are permitted to withdraw the said amounts and also the earlier amounts deposited without furnishing any security and even the earlier bank guarantee ordered is now revoked.

11. These revisions are disposed of in the above terms. No costs.

All the miscellaneous petitions in these revisions shall stand disposed of in terms of result of the revisions.

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