

IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE, PALKOL.

PRESENT : Mr. K. MOTHILAL
Principal Junior Civil Judge, Palakol

Tuesday, the 3rd day of July, 2018

E.P. No.1 of 2018
Original Suit No.144 of 2016

Between:

Valiveti Venkata Ramarao, S/o. Venkata Subbarao,
Age. 60 years, D.No.6-2-57/4, Palakol. ... Petitioner/ Decree
Holder

And

Bolla Srinivasarao S/o. Venkata Narayana, Age. 46 years, Business, Behind
BRMVMH school, D.No.4-4-57/2, Palakol ... Respondent/ Judgment
Debtor

This Execution Petition is coming before me on 26-6-2018 for final hearing in the presence of Sri K.Chantiyya, Advocate for the Petitioner/ Decree Holder, and of Sri G.V.Subbarao, Advocate for the Respondent/ Judgment Debtor; and upon hearing both sides; and having been stood over for consideration till this day, this Court made the following:-

O R D E R

This petition filed under Order.21 Rule.37 & 38 CPC by the petitioner/DHr to arrest the JDR.

2. The averments of the petition are as follows:

The petitioner submit that he obtained decree against Jdr on 5-9-2017 basing on recovery of promissory note. After passing of decree, he approached the respondent on several times and demanded him to clear off the decree amount. But the JDr have no interest to pay the decretal amount. And also doing business by which he is getting Rs.60,000/- per month and as such he is having a capacity to discharge the EP amount at once but the JDr is intentionally avoiding to discharge the EP amount. Hence this petition.

3. Respondent filed counter denying the allegations in the petition and stated that the respoPndent/JDr is not having any source of income and he is doing a collie work on which he is getting a daily wage which is sufficient for the maintenance of his family and as such he has no capacity to discharge the EP amount and this EP is not maintainable for arrest against him.

4. Petitioner/DHr was examined as P.W.1 on petitioner's side. None were examined on behalf of respondent/JDr.

5. Heard.

6. Now the point for consideration is:

Whether the petitioner is entitled for the relief as prayed for?

Petitioner contending that he filed this E.P for recovery of E.P.amount from the Jdr. After passing of decree, he approached the respondent on several times and demanded him to clear off the decree amount. JDr is having movable and immovable properties and he is doing business and getting monthly income of Rs.60,000/-. The respondent/JDr have got sufficient means to discharge the decree amount at once, the respondent/JDr intentionally avoids to discharge the decree debt.. He has been demanding the Jdr to pay the decree amount due to him but the Jdr is only postponing the same on some pretext or other and to delay the fruits of the decree. If the arrest of the Jdr is ordered he will pay the entire decretal amount in lumpsum.

7. The respondent contended that he is suffering from B.P and Diabetic, so his health is not permit to do anything and his wife depend upon others. But the respondent did not file any medical certificate to show that he is suffering with medical ailments. Even he did not enter into witness box to prove his contention.

To prove the case of the Dhr, he filed his chief affidavit before this court by mentioning about the capacity and source of income of the Jdr and though the Jdr counsel has taken a several adjournments to cross examine the Dhr but the Jdr did not come forward to cross examine the Dhr in respect of averments mentioned in chief affidavit and as such circumstances, this court treated as no cross and no evidence on behalf of Jdr.

In view of non cross examination and non filing of evidence towards proof of the Jdr contention, it is very clear that the Jdr is admitted the case of the Dhr.

8. In the above circumstances, it can be safely concluded that the J.Dr. is having sufficient means to pay the decretal amount and deliberately avoiding to satisfy the decree passed by this Court in O.S.144/2016. Thus, I find that the J.Dr. is liable for violation of the decree.

In the result, Issue warrant under order.21, Rule.38 CPC against JDr on payment of process. Call on: 12.7.2018.

Typed to my dictation on computer to the Stenographer, corrected and pronounced by me in open court, this the 3rd day of July,2018.

PRINCIPAL JUNIOR CIVIL JUDGE,
PALAKOL.

APPENDIX OF EVIDENCE
Witnesses Examined

For Petitioner :
P.W.1: valiveti Venkata Ramarao

For Respondent :
-nil-

Documents marked
For petitioner
---nil---

For respondent

PJCJ/ PKL