

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE, EAST GODAVARI
DISTRICT: AT RAJAMAHENDRAVARAM**

Present:- Sunitha Gandham
Principal District Judge, Rajamahendravaram.

Thursday, the 21st day of March, 2024.

Arb. Execution Petition No.787 of 2022 in A.C.No.457/2016

Between:

M/s.Shriram Transport Finance Company Limited,
Branch office, Lalachervu, Rajamahendravaram, Rep.
by its Sr.Recovery Executive and G.P.A.Holder, Ivaturi
Sai Subrahmanyam, S/o.Ramakrishna Rao,

....Claimant/D.Hr.

And

1. Akula Venkata Murali Mohan, S/o.Lakshmana Rao
2. Somana Srinivasa Rao, S/o.Satyanarayana
(E.P. against J.Dr.Nos.1 and 2)

.. Respondents/J.Drs.

This petition has come on 20.03.2024 before me for hearing in the presence of **Sri.P.A.V.R.P.Bhargava**, advocate for the decree holder and of **Sri.K.Prasada Rao**, Advocate for J.Dr.No.1, **Sri.M.Anil Kumar**, Advocate for J.Dr.No.2 and upon perusing the material on record and the matter having stood over for consideration till this day, this Court made the following:

ORDER

This execution petition is filed under Order XXI Rules 37, 38, Section 55 of Code of Civil Procedure, by the decree holder, seeking arrest of respondents/J.Dr.Nos.1 and 2 and to commit them to civil prison, in order to realize amount due under the award passed by the Sole Arbitrator in A.C.No.457/2016.

2. Case of the decree holder is in brief:

- a) Respondent Nos.1 and 2 are in due of Rs.78,191/- along with interest and costs to the petitioner, as per the award passed by the Arbitrator in A.C.No.457/2016. The Judgment debtors having knowledge about the

passing of award simply kept quite. Judgment debtor Nos.1 and 2 are working as driver cum brokerage business and are earning Rs.40,000/- per month and they are financially capable to discharge amount due under the award. The Judgment debtor No.2 stood as guarantor and he is jointly and severally liable on par with Judgment debtor No.1. Though the decree holder demanded several times, having means to pay, respondent Nos.1 and 2 are neglecting to pay the amount. As such, respondent Nos.1 and 2 shall be committed to civil prison.

3. Respondent No.1/Judgment debtor No.1 filed counter, resisting the petition and by stating that he discharged the debt due to the company, he has no means, the decree holder company filed this petition with wrong calculation only to harass him, and with other formal denials, prayed to dismiss the petition.

4. Respondent No.2/Judgment debtor No.2 filed counter, resisting the petition and by stating that he is guarantor and the judgment debtor No.1 is liable to discharge amount due if any, and he is no way concerned with the debt and as per the information from the judgment debtor No.1, he has cleared the debt, and prayed to dismiss the petition.

5. To prove the means of respondent Nos.1 and 2/Judgment debtor Nos.1 and 2, petitioner company has got examined G.P.A Holder of decree holder company as P.W.1.

6. Heard both sides.

7. On hearing both sides and upon perusing the material placed on record, the point that would arise for consideration is:

“Whether the petitioner has shown valid and sufficient grounds to commit the respondent Nos.1 and 2/J.Dr.Nos.1 and 2 to the Civil Prison?”

8. **Point:-**

a) The burden squarely rests upon the petitioner to prove that in spite of possessing adequate means, respondent Nos.1 and 2 failed to pay amount due under the award and the procedure prescribed therefor requires the petitioner to plead and prove necessary facts, and virtually law concedes right of silence to a respondent.

b). **Section 51 of C.P.C., reads as follows:-**

Sec.51 Powers to Court to enforce execution:-

Subject to such conditions and limitation as may be prescribed, the Court may, on the application of the petitioner, order execution of the decree ;

a) b)

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

d) e)

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the respondent 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 respondent, 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 respondent 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 respondent was bound in fiduciary capacity to account ”.

c) So, as per Section 51 of Code of Civil Procedure where the decree is for payment of money, execution by detention in civil prison should not be ordered unless the respondents have or had since the date of decree, means to pay the amount of decree and refuses or neglects or has refused or neglected to pay the same.

d) Petitioner invariably prove the circumstances covered under Section 51 Code of Civil Procedure. This provision favours both the petitioner and the respondents. On one hand, the petitioner can realize the fruits of decree, by sending the respondent to civil prison. And, on the other hand, if the petitioner fails to prove the aspects covered under Section 51, and if the respondents are not in a position to pay amount, they will be protected.

e) In order to establish the means of respondent Nos.1 and 2/J.Dr.Nos.1 and 2, petitioner relied upon the oral evidence of P.W.1. Admittedly, an

award in A.C.No.457/2016 was passed by an arbitrator, against the respondent Nos.1 and 2/Judgment debtor Nos.1 and 2 and as per the award, respondent Nos.1 and 2 were directed to pay an amount of Rs.78,191/- with subsequent interest and costs of Rs.2,074/-.

f) It is the evidence of petitioner/decreed holder that the respondent No.1 and 2/J.Dr.No.1 and 2 are working as driver and also doing business and are earning Rs.40,000/- per month and having sufficient means, neglecting to pay amount due under the Award and as such, respondent Nos.1 and 2 shall be committed to civil prison. To substantiate the version of P.W.1, he has not produced any piece of document. As already stated that respondent Nos.1 and 2 can maintain silence and the burden squarely lies upon the petitioner to prove the means of the respondents to commit them to Civil Prison.

g) In ***G.Sudhakar Reddy v. M/s. Jahnavi Chit Fund Private Limited¹***, it has held that:-

“In case of the execution petition for arrest and detention of the respondents, burden lies on petitioner, to establish that the respondents having means to pay neglected to pay the decretal debt, before ordering arrest and detention in prison ”.

h) In ***E.Muragaiah Vs. E. Akambaram²***, it has held that:

“Existing circumstances mentioned in clause (a) to (c) to proviso to Section 51 should be analyzed in petition for detention of respondents in civil prison, and if no allegations are made in the petition, as required in proviso (b) to Section 51 of the Code that the petitioner demanded for payment of decretal amount and that the respondent s refused to pay the same, the case of petitioner would fail”.

1. 2006 (4) ALT 665

2. 1996 (2) ALT 720

i) In ***Tata Kesava Rao Vs. Shaik Hasan Ahmed³***, the execution court dismissed the petition on the ground that the decree holder did not file any proof, to show the house property and mechanic shed, despite the judgment debtor denied the same, and if there are immovable properties, the decree holder can proceed against the property of the judgment debtor rather than the person and the Hon'ble High Court also confirmed the order of the execution court conceding the reasons and by holding that the decree holder failed to discharge his burden, by producing documentary evidence, regarding properties of the judgment debtor.

j). In ***Korada Narayana Rao Vs. Kudara Mutyalu⁴***, it was held by the Hon'ble High Court that:

“The order for arrest has to the effect of depriving the liberty of a person, the conditions set out by the higher courts should be scrupulously followed and as held by courts on many earlier occasions, unless there is a deliberate intention not to pay despite possessing sufficient means an order of arrest should not be granted”.

k) As seen from the overall material placed on record, to show the means of respondent Nos.1 and 2, except oral statement of P.W.1, there is no piece of document to show that they are working as driver and also doing business and is earning Rs.40,000/- per month. As already mentioned, strict proof of means of respondent Nos.1 and 2 is required, to commit them to civil prison. Moreover, the petition is filed to commit the respondent Nos.1 and 2 to civil prison and the petitioner utterly failed to adduce oral as well as documentary evidence to show that having sufficient means to pay

3. 2018 (1) LS 80

4. 2019 (1) Am.L.J 301.

amount due under the award in A.C.No.457/2016, respondent Nos.1 and 2 neglected and refused to pay amount and as such, this point is accordingly answered holding that the respondent Nos.1 and 2 have no means and have not wantonly refused or neglected to pay amount due under the award.

9. **In the result**, the petition is dismissed. There are no order of costs.

Typed to my dictation to the Stenographer, corrected and pronounced by me in open court, this the 21st day of March, 2024.

Sd/- Sunitha Gandham
Principal District Judge,
Rajamahendravaram.

Appendix of Evidence
Witnesses examined.

For petitioner:

For Respondent

P.W.1: Ivaturi Sai Subrahmanyam

Documents Marked

- Nil -

Sd/- Sunitha Gandham
Principal District Judge,
Rajamahendravaram.