



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3299]

FRIDAY, THE FIRST DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 921/2026

Between:

1. SRI BATTULA KIRAN KUMAR, S/O. ANNAPURNESWARA RAO,
AGED 42 YEARS, R/O. HOUSE DOOR NO.7-16,
APPALANARASAYYA COLONY, VEPAGUNTA, PENDURTHI,
VISAKHAPATNAM.

...PETITIONER

AND

1. DISTRICT FOREST OFFICER CUM AUTHORIZED OFFICER,
VISAKHAPATNAM, AT PRESENT DISTRICT FOREST OFFICER,
ANAKAPALLI DISTRICT.

2. THE FOREST RANGE OFFICER, CHODAVARAM RANGE,
CHODAVARAM, ANAKAPALLI DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to aggrieve by the impugned order Dated 05-02-2026 in E.P.19/2025 in F.A. 02/2021 on the file of IX Additional District and Sessions Judge, at Chodavaram, Visakhapatnam District,.

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the impugned order dt. 05-02-2026 in E.P.19/2025 in F.A. No.02/2021 on the file of IX Additional District and Sessions Judge, at

Chodavaram, Visakhapatnam District pending disposal of the above CRP in this Hon'ble Court, in the interest of justice, and to pass

Counsel for the Petitioner:

1.S.MOHANA RAO

Counsel for the Respondent(S):

1.GP FOR ARBITRATION

The Court made the following:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

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ORDER:

Heard Sri Singuru Mohan Rao, learned counsel for the petitioner and learned Government Pleader for Arbitration appearing for respondents.

2. With the consent of learned counsel for the parties, the Civil Revision Petition is finally decided at this stage.

3. The petitioner is the decree holder. Initially the respondents passed the order of confiscation under the provisions of Forest Act but the petitioner filed the appeal being FA.No.02 of 2021 which was allowed by judgment and decree dated 12.08.2024 passed by the IX Additional District Judge, Chodavaram in the following terms:

“32. In the result, the appeal is allowed. The confiscation orders passed by 1st respondent vide proceedings in 1375/2020/S5 (O.R.211/2020/CDM) dated 25.03.2021 are hereby set aside. The 1st respondent is directed to release the seized property i.e., Vehicle bearing Registration No.AP 27Y 2259 to the Appellant on proper identification under proper acknowledgment.”

4. Learned counsel for the petitioner submits that against the appellate order C.R.P.No.2653 of 2025 was filed before this Court which was pending without any stay.

5. The respondents- Judgment Debtors did not comply with the said judgment/decreed. The petitioner filed E.P.No.19 of 2025 mentioning the provisions of Order 21 Rule 37 and 38 CPC also requesting to punish the

J.Drs.1 & 2 for willfully disobeying the orders. The said petition has been dismissed by learned IX Additional District Judge, Chodavaram by an order dated 05.02.2026 against which the present Civil Revision Petition under Section 115 of CPC has been filed.

6. The Execution Petition has been dismissed on the ground that the provisions of Order 21 Rule 37 & 38 CPC would be applicable for execution of decree for payment of money. The present case is not the case for execution of decree for payment of money, so, the provisions under Order 21 Rule 37 & 38 CPC were inapplicable.

7. The learned Execution Court also observed that no order of punishment can be passed as the decree holder failed to prove that the J.Drs willfully and intentionally disobeyed the execution of decree.

8. Learned counsel for the petitioner submits that the decree was executable under Order 21 Rule 31 CPC as the decree was for specific movable property seized. He submits that mere mentioning of the wrong provision that is, Order 21 Rule 37 & 38 would not take away the jurisdiction of the Court, once the Court had the jurisdiction for execution of decree under the correct provision of law.

9. Learned Government Pleader for the respondents also submits that the decree can be executed under Order 21 Rule 31 CPC but it cannot be under Order 21 Rule 37 & 38 CPC and therefore there is no illegality in the

impugned order. The petitioner ought to have applied under correct provision of law.

10. I have considered the aforesaid submissions and perused the material on record.

11. A perusal of Order 21 Rules 37 & 38 CPC makes it clear that the view taken by the learned Execution Court is correct that the incorrect provisions of law have been mentioned, but at the same time law is also settled that the jurisdiction of the Court is not taken away by mere mention of the wrong provision of law or even non-mention of any provision of law. When the law confers the authority on the Court and the action can be taken under the correct provision of law, the Court, simply on the basis of non applicability of referred provision of law, as in this case Order 21 Rules 37 & 38 of CPC, cannot reject the petition as not maintainable. The learned Court should have considered whether the decree could be executed under any other correct provision of law.

12. In the case of ***Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah***¹, the Hon'ble Apex Court held that "it is well-settled law that mere non-mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court."

13. In view of the aforesaid consideration, Civil Revision Petition is allowed. The order dated 05.02.2026 is set aside and the E.P.No.19 of 2025 in

¹ (2019) 9 SCC 533

F.A.No.02 of 2021 in the Court of learned IX Additional District Judge, Chodavaram is restored for fresh decision in accordance with law keeping in view the provisions of Order 21 Rule 31 CPC.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Dated: 01.05.2026
AG

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 921/2026

Dated: 01.05.2026
AG