

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
CIVIL REVISION PETITION NO.4123 OF 2014

ORDER:

1 This revision, under Section 115 of the Code of Civil Procedure, is filed challenging the order, dated 23.07.2014, passed in E.A.No.9 of 2014 in E.A.No.7 of 2014 in E.P.No.2 of 2014 in C.D.No.1520 of 1998 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad.

2 For the sake of convenience, the parties to this revision will hereinafter be referred to as they are arrayed before the executing Court.

3 The petitioner was a tenant in respect of a portion of the building bearing municipal No.1-2-412/5, Valmiki Nagar, Domalguda. On 29.09.1995 the respondent Nos.1 and 2 herein have entered into a Memorandum of Understanding to develop the said property into a residential complex. On 21.08.1996, the second respondent entered into an agreement with the petitioner agreeing that he will sell a three bedroom flat on South East corner of I Floor of the proposed complex with an area of 1294 sft. along with parking area, provided the petitioner has to vacate the schedule premises. In pursuance of the agreement dated 21.08.1996, the petitioner vacated the premises facilitating the second respondent to construct apartments in the schedule property. In course of time, misunderstandings arose between the parties, which prompted the petitioner to file C.D.No.1520 of 1998 on the file of the District Consumer Forum – II, Hyderabad with a prayer to direct the second respondent to execute and register a sale deed in favour of the petitioner and deliver possession of three bedroom flat on South East corner of I Floor of the complex with an area of 1294 sft. and also award Rs.1.00 lakh towards compensation. On 07.08.2000, the District Consumer Forum – II allowed the C.D.No.1520 of 1998 directing the second respondent

to execute and register a sale deed in favour of the petitioner within three months on depositing of Rs.2.00 lakhs by the petitioner towards registration expenses and also pay compensation. Being aggrieved by the orders of the District Consumer Forum – II, the second respondent filed F.A.No.58 of 2001 on the file of the A.P. State Commission and the same was dismissed on 21.3.2001. The second respondent approached the National Commission by filing a revision petition No.920 of 2001 and the same was also dismissed at the stage of admission on 23.05.2001. Thereafter, the petitioner filed R.P.No.22 of 2001 under Section 27 of the Consumer Protection Act against the second respondent and the District Forum – II at Hyderabad had partly allowed the same by imposing fine of Rs.5,000/- on the second respondent vide order dated 22.10.2002.

The petitioner challenged the said order before the State Commission by filing R.P.No.188 of 2002. The State Commission allowed the said petition by setting aside the orders of the District Consumer Forum-II, and convicted the second respondent and sentenced him to undergo imprisonment for a period of two years in default of execution of sale deed within one month. Challenging the said order passed by the District Forum – II in R.P.No.188 of 2002, the second respondent filed Writ Petition No.278 of 2003, which was allowed by setting aside the order passed by the District Forum in R.P.No.188 of 2002. However, this Court directed the second respondent to deposit Rs.13.00 lakhs in full and final settlement of all claims and demands of the petitioner within a period of two months and on such deposit, the petitioner was permitted to withdraw the same. Being not satisfied with the orders of this Court passed in the above Writ Petition, the petitioner filed Civil Appeal No.1578 of 2005 before the Hon'ble apex Court. On 25.11.2013 the Hon'ble apex Court passed the following order:

“In the circumstances, we grant stay of the order passed by the High Court. Consequently it will be open to the petitioner to seek the execution of the order passed by the

District Consumer Forum-II, Hyderabad, dated 17.08.2000, in the District Court.”

4 In pursuance of the orders passed by the Hon’ble apex Court, the petitioner filed E.P.No.2 of 2014 in CD No.1520 of 1998 on the file of the 25th Additional Chief Judge, City Civil Court, Hyderabad against the second respondent. During pendency of the execution petition, the first respondent filed E.A.Nop.7 of 2014 under Order 21 Rules 97 and 99 r/w Section 151 CPC. The petitioner herein filed E.A.No.9 of 2014 in E.A.No.7 of 2014 in E.P.No.2 of 2014 under Order VII Rule 11 CPC to reject the E.A.No.7 of 2014 and the same was dismissed by the executing Court Hence the present revision.

5 Second respondent is not a necessary party to the present proceedings. In spite of service of notice, the first respondent did not choose to appear and contest the matter. Hence this Court is inclined to dispose of this revision petition on merits in the absence of the first respondent.

6 The learned counsel for the petitioner submitted that the executing Court has no jurisdiction to entertain the application filed by the first respondent. He further submitted that the petition filed by the first respondent is premature as no sale deed was executed in favour of the petitioner so far leave apart issuance of warrant of delivery.

The executing Court failed to appreciate that the first respondent filed the claim petition at the behest of the second respondent thereby to deprive the petitioner – D.Hr to enjoy the fruits of the decree during his lifetime. He further submitted that the executing court has not considered the case law cited by the petitioner in right perspective.

7 Now the point that arises for consideration in this revision petition is:

“Whether the order passed by the executing Court is legally sustainable or not?”

Point:

8 As per the terms and conditions of the agreement dated 21.08.1996, the petitioner is entitled to a flat on South East corner of the I floor of the proposed complex, provided he vacates the premises without insisting on tenancy rights. The petitioner herein for the last 15 years has been knocking the doors of one court or the other in order to obtain registered sale deed from the first respondent in pursuance of the agreement dated 21.08.1996. The first respondent has been postponing the execution of the sale deed on one pretext or the other though he could not succeed in the litigation. Ultimately, the petitioner filed E.P.No.2 of 2014 in pursuance of the order passed by the Hon'ble apex Court.

9 Before advertng to the provisions of CPC and case law, I would like to refer to a few disputed facts of the case so as to arrive at an appropriate conclusion with regard to the maintainability of the claim petition filed by the first respondent.

10 As per the E.P. schedule, the petitioner is claiming flat bearing No.101 in the first Floor towards South East corner within an area of 1294 sft along with car parking space in the complex Carcherla Castle. The first respondent obtained a decree in O.S.No.783 of 2001 restraining the second respondent from executing execute sale deed in respect of Flat No.101 and 102 in Ground Floor, Flat No.201 in the First Floor and Flat No.504 in the Fourth Floor in MCH No.1-2-412/15 in Plot No.B-2, admeasuring 400 Sq.Yards of Gaganmahal Cooperative Development Society, situated in Valmiki Nagar, Hyderabad. The first respondent filed claim petition basing on the decree passed in O.S.No.783 of 2001. Even in E.A.No.7 of 2014, the first respondent is claiming right over Flat No.101, 102 in the Ground Floor, Flat No.201 in First floor and Flat No.504 in the 4th Floor in pursuance of the memorandum of

understanding dated 20.09.1995 entered between her and the second respondent. A perusal of the E.P. No.2 of 2014 and E.A.No.7 of 2014 clinchingly demonstrates that the property claimed by the petitioner is entirely different to that of the property claimed by the first respondent. A perusal of the record reveals that the petitioner as well as the first respondent are claiming right over different properties. It appears that the executing Court has not bestowed its interest to the schedule mentioned in O.S.No.783 of 2001 and E.P.No.2 of 2014 in order to ascertain whether the property claimed by the petitioner and the first respondent is one and the same or not. Therefore, I am fully agreeing with the submissions made by the learned counsel for the petitioner that the schedule properties claimed by both parties is not one and the same.

11 The next question that falls for consideration is whether the first respondent has no knowledge about the litigation between the petitioner and the second respondent till filing of E.A.No.7 of 2014 in E.P.No.2 of 2014.

12 The second respondent filed written statement in O.S.No.783 of 2001, with the following averments.

“10 (b) As the said flat was not delivered, the tenant approached the District Consumer Forum, Hyderabad and filed a C.D.No.1520 of 1998 on the file of the District Forum-II against this defendant for delivery of possession of South-East corner flat on first floor and other reliefs. The Hon'ble District Forum passed the award on 17.08.2000 in favour of the tenant and against this respondent with a direction to deliver the said flat.”

13 This clearly indicates that the litigation between the petitioner and the second respondent is very much within the knowledge of the first respondent. The first respondent is very much aware that the petitioner filed execution proceedings in pursuance of the interim order passed by the Hon'ble apex Court pending disposal of Civil Appeal No.20082 of 2013. For one reason or the other, the first

respondent kept quiet for all these years and filed a claim petition as if she came to know about the litigation recently. It is not out of place to extract hereunder Sub-rule 1 of Rule 97 of Section 21 CPC.

Rule 97: Resistance or obstruction to possession of immovable property,-

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

14 A perusal of the above provision clearly demonstrates that Sub-rule 1 of Rule 97 of Order 21 CPC can be pressed into service only when possession is being taken in pursuance of warrant of delivery issued by a competent Court.

15 Let me consider the facts of the case on hand in the light of the above provision. As observed earlier, unfortunately, the 90 years old petitioner is not in a position to enjoy the fruits of the decree granted in his favour on 17.8.2000 in spite of his legal battle. Nearly after 14 years of passing of decree, the petitioner filed E.P.No.2 of 2014 with a fond hope that he will enjoy the fruits of the decree. The first respondent all of a sudden came into picture and filed the claim petition taking aid of the provision under Rule 97 and 98 of Order 21 CPC.

16 The present E.P. is filed seeking a direction to the second respondent to execute a registered sale deed in favour of the petitioner. Even if the second respondent execute a registered sale deed in favour of the petitioner, in pursuance of the orders if any passed by the executing Court, thereafter, the second respondent has to deliver the property to the petitioner. After execution of the sale deed in favour of the petitioner, for any other reasons, if the second respondent fails to deliver the property, again the executing

court has to come to the rescue of the petitioner by issuing warrant of delivery. In pursuance of the warrant of delivery, if the petitioner made an attempt to take possession of the property which is in possession of the first respondent, then only a cause of action would arise for the first respondent to resist the delivery of possession of the property to the petitioner by invoking the provisions of Rule 97 of Order 21 CPC. It appears that the first respondent filed the claim petition with an apprehension that the petitioner may take possession of the property which is in her possession. Mere apprehension in the mind of the first respondent by itself is not a sufficient ground to file a petition more particularly a petition invoking the provisions under Rule 97 of Order 21 CPC without there being any cause of action. The apprehension of the first respondent, if any, is misconceived one. As observed earlier, the property claimed by the petitioner is entirely different to the property claimed by the first respondent in view of the schedules furnished by both parties. The executing Court has not considered all these aspects in right perspective while passing the impugned order.

17 It is a matter of common knowledge that a J.Dr will always try to take any number of steps with an ulterior motive to protract the execution proceedings as long as possible. The D.Hr who is vexed with the prolonged litigation some times may give up his claim or enter into a compromise with the J.Dr by foregoing his legitimate share. Suffice it to say, if the various weapons used by the J.Dr to protract the E.P. proceedings would not yield expected results, then the possibility of setting up some body else claiming right over the E.P. schedule property as a last measure cannot be ruled out completely. The executing Court must be vigilant to safeguard the rights of the D.Hr as well as the J.Dr. The orders passed by the executing Court shall not cause prejudice to the rights of any one of

the parties to the proceedings. In that view of the matter, the possibility of filing of E.A.No.7 of 2014 in E.P.No.2 of 2014 by the first respondent at the instigation of the second respondent cannot be ruled out completely.

18 The next contention of the learned counsel for the petitioner is that if at all the first respondent has any grievance, she has to approach the Consumer Forum, which passed the decree to challenge the validity of the said order. It is an admitted fact that the 25th Additional Chief Judge, City Civil Court, Hyderabad has not passed the decree in question. In such circumstances, whether the executing Court is entitled to entertain the claim petition is the relevant point to be addressed.

19 To substantiate the argument, the learned counsel for the petitioner has drawn my attention to the following decisions.

M.S. Murthy and Others. Vs. M/s. Gold Stone Exports Pvt.

Ltd^[1] wherein this Court held as under:

16. The next question that was urged before us is about the jurisdiction of the District Judge to entertain the application under Order 21 Rules 91 to 101 CPC. This question would arise only if it was held that the applications are maintainable under law. It should be noticed that as the decree was passed by the High Court, the executing Court is the High Court itself. In the instant case, the respondents filed application before the learned single Judge and pursuant to the order passed by the learned single Judge directing delivery of possession in favour of the respondents herein, the respondents herein filed EP 3 of 1996 before the District Judge, RR District. The District Judge issued warrant to the Bailiff implementing the order of the High Court. Thus, the District Judge was merely implementing the order of the High Court. The District Judge is not executing a decree passed by him. He cannot, therefore, entertain any application obstructing the execution of the decree passed by the High Court. Hence, these applications could only be filed before the executing Court, i.e, the High Court. The District Judge, thus, has no jurisdiction to entertain any application by the appellants with regard to execution of the decree passed by the High Court.

Kazi Akeel Ahmed Vs. Ibrahim and Another^[2] wherein the

Hon'ble apex Court held as under:

8. We have given serious consideration to the facts of the present case and the submissions made by the learned Counsel for the appellant. It is true that when an application under Order 21 Rule 97 of the Code is made, it contemplates an investigation into the claim made in the application, in accordance with the provisions contained in Rule 98 and the rules following thereafter. But in the special facts and circumstances of the present case, we see no reason to hold such an enquiry or investigation as the same would be a futile exercise in view of the fact that Civil Suit instituted by the respondent No. 2 Girraj making the same claim as has been made by him in his application under Order 21 Rule 97 has been dismissed by the Civil Court on November 2, 1995. A perusal of the said judgment goes to show that the respondent No. 2 Girraj was unable to produce any evidence, oral or documentary, to prove that he was holding the shop in question as tenant in his own rights. These facts clearly go to show that the claim of the respondent No. 2 that he is a tenant is wholly fictitious and without any foundation and it was for this reason that the suit had been dismissed with cost to the tune of Rs. 2,000/-. Having regard to these facts and circumstances, we find absolutely no merit in the application of respondent No. 2 resisting the execution of the decree validly passed by a competent Court of Law.

P. Divya V. P. Jayender Rao and another^[3] wherein this Court held as under:

8. There is hardly any controversy as regards this proposition. For all practical purposes, a claim petition presented under Rule 58 of Order 21 of the Code has to be treated as a plaint, and the matter be tried as a suit. However, it cannot be insisted that every plaint presented to a Civil Court be tried on merits, and after hearing the parties. Under Order 7, Rule 11 of the Code, the Courts are conferred with the power to reject the plaint on the grounds, such as, non disclosure cause of action, relief being under valued, the documents being insufficiently stamped or the subject-matter of the suit having been barred by any Law. In the present case, the executing Court was posted with all the facts and the claim petition did not disclose any cause of action. The appellant was not even born by the time the decree which is sought to be obstructed came to be passed. At the most, she had rights to seek partition against her father, the second respondent herein. It was not at all competent for her to set at naught the partition that took place between her father and other co-parceners.

20 The facts of the case on hand are almost identical to the facts of the cases cited supra. As per the principle enunciated in the case

2nd cited supra, the executing Court can reject the vexatious claim petitions. As per the principle enunciated in the case 3rd cited supra, petition filed under Order 21 Rule 58 CPC did not disclose any cause of action, the same can be rejected. The principle enunciated in the cases 1 to 3 cited supra squarely applicable to the facts of the case on hand.

21 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I have no hesitation to hold that the first respondent filed E.A.No.7 of 2014 without there being any cause of action. When there is no cause of action to file a petition, the Court can reject the same by following the analogy contemplated under Order 7 rule 11 CPC.

22 Viewed from any angle, factual or legal, the E.A. is not maintainable. The finding recorded by the executing Court is not sustainable either in law or on facts. Therefore, the order passed by the executing Court is liable to be set aside.

23 In the result, the Civil Revision Petition is allowed, setting aside the order dated 23.07.2014, passed in E.A.No.9 of 2014 in E.A.No.7 of 2014 in E.P.No.2 of 2014 in C.D.No.1520 of 1998 on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad and consequently E.A.No.9 of 2014 filed by the petitioner is allowed and the E.A.No.7 of 2014 filed by the first respondent stands rejected. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this revision petition, shall stand closed.

T. SUNIL CHOWDARY, J

Date:18th September, 2015

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[\[1\]](#) 1999 AIHC 2183

[\[2\]](#) (1996) 8 SCC 372

[\[3\]](#) 2004 (3) ALD 553