

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.1582 of 2015

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/judgment debtor aggrieved by the order and decree dated 02.04.2015 in E.A.No. of 2015 in E.P.No.9 of 2013 in R.C.C.No.104 of 2007 passed by the Rent Controller-cum-IV Additional Junior Civil Judge, Vijayawada, Krishna District, rejecting the application filed by him under Sections 47 and 151 of C.P.C., to dismiss E.P.No.9 of 2013 since the decree dated 13.12.2011 in R.C.C.No.104 of 2007 is null and void as the Rent Controller passed the said decree without having jurisdiction.

2 . The petition for eviction in R.C.C.No.104 of 2007 filed by the respondent/landlord was decreed on 13.12.2011, which has been confirmed by the lower Appellate Tribunal-cum-Principal Senior Civil Judge, Vijayawada, in R.C.C.M.A.No.32 of 2012, and the same has become final. In the execution proceedings in E.P.No.9 of 2013, the petitioner/judgment debtor has filed the present application under Sections 47 and 151 of C.P.C., to dismiss E.P.No.9 of 2013 on the ground that the Rent Controller, who passed the decree dated 13.12.2011 in R.C.C.No.104 of 2007, does not have jurisdiction. After considering the material on record, the Court below has rejected the said application through the impugned order dated 02.04.2015. Hence, the present civil revision petition.

3. Sri N. Ashwani Kumar, learned counsel for the petitioner/judgment debtor, would submit that as the Rent Controller had no jurisdiction having regard to the rent being paid by the petitioner/judgment debtor, inspite of the decree passed by the Rent Controller, as confirmed by the lower appellate Tribunal, the petitioner/judgment

debtor can object to it by filing an application under Sections 47 and 151 of C.P.C. In support of his contention, the learned counsel has placed reliance on a judgment of the Apex Court in SARWAN KUMAR AND ANOTHER Vs. MADAN LAL AGGARWAL, wherein it was held that a decree passed by a Court having no jurisdiction would be a nullity and the judgment debtor can object to the execution of such a decree being a nullity and non-est and that its validity can be set up whenever it is sought to be enforced, including the stage of execution of the decree or any other collateral proceedings.

4 . On the other hand, Sri S.S. Prasad, learned counsel for the respondent/decreed holder sought to sustain the impugned order.

5 . It is not in dispute that on the objection raised by the petitioner/judgment debtor by way of defence on the jurisdictional aspect in R.C.C.No.104 of 2007 before the Rent Controller, Vijayawada, a finding was recorded and the same has been confirmed by the lower Appellate Tribunal by way of dismissal of appeal in R.C.C.M.A.No.32 of 2012, dated 12.12.2012. When the question of jurisdiction having regard to the quantum of rent being paid by the petitioner/judgment debtor is already adjudicated on merits by the Rent Controller, which has been confirmed by the lower Appellate Tribunal, the very same question cannot be raised in the execution proceedings by way of filing an application under Section 47 of C.P.C. Having regard to the facts in the case on hand, the decision of the Apex Court relied on by the learned counsel for petitioner/judgment debtor would not render any assistance to the claim of the petitioner/judgment debtor. Further, it is well settled that the Execution Court cannot go beyond the scope of the decree.

6. In view of the reasons assigned by the Court below, I do not find any illegality in the impugned order, warranting interference by this Court under Article 227 of the Constitution of India.

7 . For the aforesaid reasons, this civil revision petition is devoid of merits and is accordingly dismissed, at the admission stage. As a

sequel, miscellaneous petitions pending, if any, shall stand closed.
No order as to costs.

JUSTICE R. SUBHASH REDDY

24.04.2015.

Msr

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