

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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CIVIL REVISION PETITION No.263 OF 2015

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ORDER:

This is a Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner – decree holder, who is aggrieved of the docket order, dated 20.09.2014, of the Senior Civil Judge's Court, Mancherial, passed in E.A.CFR.No.3775 of 2014 in E.P.No. nil of 2014 in O.S.No.95 of 2009.

2. I have heard the submissions of the learned counsel for revision petitioner and perused the material record.

3. The facts which led to filing of the present Civil Revision Petition in brief are as follows:

The petitioner herein having brought a Suit for recovery of money against respondents 1 and 2/defendants 1 and 2 in O.S.No.95 of 2009 on the file of Senior Civil Judge's Court, Mancherial, had obtained a decree against respondents 1 and 2/defendants 1 and 2 – judgment debtors. After the decree was passed, the decree holder had filed an Execution Application before the trial Court under Section 39 of the Code of Civil Procedure, 1908 ('the Code' for short) requesting to send the decree in the said Suit for execution to the Court of Senior Civil Judge, Warangal, which is a Court of competent jurisdiction, as the 1st defendant/judgment debtor, who suffered the decree, has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy that decree, but has properties within the local limits of the jurisdiction of the Senior Civil Judge's Court at Warangal. At the stage of entertaining the said Execution Application, the Office of the Court of Senior Civil Judge,

Mancherial i.e., the Court below has raised an objection that the schedule property at Warangal, against which the decree holder intends to proceed against for realisation of the decree debt, is situated within a scheduled area and that, therefore, as per the decision of the Honourable Supreme Court, the Civil Court is not competent to entertain any proceeding and hence, the Execution Application is not maintainable. Having taken the said objection, the Court below had returned the Execution Application. On that, the said Execution Application was re-presented by the decree holder – revision petitioner by stating that the schedule property situate at Warangal does not come within the scheduled area, much less, notified scheduled area. However, on the same objection, the Court below had refused to entertain the Execution Application. Therefore, the petitioner/decreed holder is before this Court.

4. The learned counsel for the revision petitioner would submit that the property, which is being sought to be proceeded against, is not situated in a scheduled area and that when an application under Section 39 of the Code is filed for transfer of a decree, the Court is obliged to transmit the decree along with a non-satisfaction certificate showing the result of the execution proceedings as required under law and that while entertaining the Execution Application under Section 39 of the Code, the Court is not required to go into the merits of the matter and that it is for the transferee Court to examine the executability or otherwise of the decree and that, therefore, the objection of the Court below is untenable and unsustainable. In support of the said contention that the property being sought to be proceeded against and situate at Warangal is not a property situate within the Scheduled Area, the petitioner had produced certain documents with a petition to receive additional evidence. In the considered view of this Court, there is no need in this revision to decide any issues concerning merits of the matter. Suffice if it is observed that the petitioner is given liberty to produce the said record either before the Court below, if necessary, or before the transferee Court, as the case may be.

5. In view of the facts and submissions, it is necessary to refer to Section 39 and also Section 42 of the Code, which deal respectively with transfer of decree and the powers of the Court in executing transferred decree. The said Sections 39 and 42 of the Code read as under:

“39. Transfer of decree – (1) The Court which passed a decree may, on the application of, the decree-holder, send it for execution to another court of competent jurisdiction, –

- a. if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court; or
- b. if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits, of the jurisdiction of such other Court; or
- c. if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it; or
- d. if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any Subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”

“42. Powers of Court in executing transferred decree – (1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

(2) Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:-

(a) power to send the decree for execution to another Court under section 39;

(b) power to execute the decree against the legal representative of the deceased judgment – debtor under Section 50;

(c) power to order attachment of a decree.

(3) A court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:-

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.”

6. A perusal of the said provisions would show that when a decree holder seeks by application to send the decree for execution to another Court of competent jurisdiction, the Court which passed the decree is obliged to transfer the decree and that on such

transmission of the decree with a non-satisfaction certificate by the transferor Court which passed the decree, the Court to which the decree is sent for execution will have the same powers in executing such decree as if it has been passed by itself. Therefore, a plain reading of the provisions of law would show that it is for the transferee Court to consider the objections, if any, with regard to the executability or otherwise of the decree or any other questions like the question raised by the Court below.

7. Viewed thus, this Court finds that the objection taken by the Court below is not sustainable and that, therefore, the order, dated 20.09.2014, passed in E.A.CFR.No.3775 of 2014 in E.P.No. nil of 2014 in O.S.No.95 of 2009 on the file of Senior Civil Judge, Mancherial, is liable to be set aside.

8. In the result, the Civil Revision Petition is allowed and the order dated 20.09.2014 of the Court below is set aside and the Court below is directed to entertain the Execution Application and do the needful in the matter by following the procedure established by law, leaving the question of executability or otherwise of the decree to be decided by the transferee Court, if necessary, and if such question falls for consideration. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

JUSTICE M. SEETHARAMA MURTI

April 10, 2015

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THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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