

HONOURABLE SRI JUSTICE S. V. BHATT

CIVIL REVISION PETITION No. 23 OF 2015

DATED 21ST JANUARY, 2015.

BETWEEN

Soruju Ganesh

....Petitioner

And

Papani Nageswara Rao

...Respondent.

HONOURABLE SRI JUSTICE S. V. BHATT

CIVIL REVISION PETITION No. 23 OF 2015

ORDER:

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The appellant in A.S.No.90 of 2014 in the Court of the learned Principal District Judge, Khammam is the revision petitioner. The Civil Revision Petition is filed assailing the conditional order passed by the learned District Judge in I.A.No.1738 of 2014 directing the revision petitioner to deposit one-fourth of the decree amount on or before 29.12.2014.

The learned Counsel for the petitioner vehemently contends that the imposition of conditions particularly deposit of 1/4th of the decretal amount is not in line with Rule 5 of Order 41 CPC. The learned Counsel further submits that the decree assailed in A.S.No.90 of 2014 is not a money decree; at any rate, the condition imposed therein is *onerous* and ought not to have been imposed by the learned appellate judge.

The objections are noted to appreciate the vehemence with which the learned Counsel has assailed the conditional order passed in I.A.No.1738 of 2014. Order 41 Rule 5 CPC reads as under:

“5. Stay by Appellate Court:-

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(Explanation: An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.)

(2) *Stay by Court which passed the decree:*
Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing there from, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of decree or order as may ultimately be binding upon him.

(4) (Subject to the provision of sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree.)”

It is not in dispute that the effect of decree impugned in A.S.No.90 of 2014 is one for recovery of money. Order 41 Rule 3 has restricted the discretion of Appellate Court while granting stay of decree. The Appellate Court in my opinion has rightly exercised the discretion and imposed the condition assailed in the Civil Revision Petition. This Court finds no error of jurisdiction, much less any illegality in the order impugned in the Civil Revision Petition.

The Civil Revision Petition is dismissed. However, to meet the ends of justice, I consider it appropriate to extend the time granted by the Appellate Court for compliance of the conditions till 15.02.2015. No order as to costs.

Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence.

JUSTICE S. V. BHATT

DATED 21ST JANUARY, 2015.
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