

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1773 of 2009

ORDER:

This Revision Petition is filed challenging the Order dt.23-01-2009 in E.P.No.235 of 2000 in O.S.No.54 of 1992 of the Additional Senior Civil Judge, Kurnool.

2. Petitioner herein is the defendant/J.Dr. in the said suit. The suit was decreed on 01-08-1997 directing the petitioner to pay certain sum of money to the respondent. Since the decree was not satisfied by the petitioner, E.P.No.235 of 2000 was filed by the respondent under Order 21 Rule 22, 54 and 66 CPC for realization of E.P. amount by attaching schedule mentioned property, to sell the same in a Court auction and to credit the sale proceeds to the E.P.
3. The schedule property was thereupon attached on 31-06-2001. The petitioner then filed its objections stating that it had become sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the Act, 1985'); that the matter was before Board for Industrial, Financial and Reconstruction (for short 'BIFR'); therefore, the decree is void; and the executing Court cannot execute the decree against the present management.
4. By Order dt.09-01-2003, the executing Court held against the petitioner. The petitioner questioned the same in C.R.P.No.611 of 2003. The said Revision Petition was initially dismissed for non-prosecution on 21-06-2006. It was subsequently restored to the file of this Court vide Order dt.17-02-2009 in C.R.P.M.P.No.6659 of 2008. However, in the

meantime, on the ground that no steps were taken to set aside the Order dt.21-06-2006 dismissing C.R.P.No.611 of 2003 for non-prosecution, the Court below passed the order dt.23-01-2009 in E.P.No.235 of 2000 impugned in the present Revision Petition.

5. It is pertinent to note that after restoration, C.R.P.No.611 of 2003 was disposed of on 09-12-2010 rejecting the contention of the petitioner that the decree in question had become void and unexecutable in view of the provisions of the Act, 1985. This Court gave a finding that no material was filed by the petitioner to show that the petitioner had become a sick industry under the provisions of the said Act; that the management was taken over by BIFR; that a scheme was prepared; and that the debt due to the respondent is not shown in the scheme prepared by the present management. This Court confirmed the order of the trial Court dt.09-01-2003 allowing E.P.No.235 of 2000.
6. Learned counsel for the petitioner contends that in the Order dt.09-12-2010 while no doubt holding that there were no grounds to interfere with the order passed by the executing Court on 09-01-2003, this Court had made an observation to the effect that the petitioner can as well raise all its contentions before the executing Court. He therefore contends that the executing Court should be directed to again hear the objections of the petitioner. He also contended that the decree in question cannot be executed beyond a period of 12 years from the date of its passing and on this ground also the Order dt.23-01-2009 in E.P.No.235 of 2000 cannot be sustained.
7. The fact remains that the E.P.No.235 of 2000 was filed

within a period of 12 years from the date of decree i.e. 01-08-1997. Therefore, the objection relating to limitation cannot be sustained.

8. As regards the contentions regarding applicability of the Act is concerned, the said contention has already been negatived by this Court while dismissing C.R.P.No.611 of 2003 on 09-12-2010. Merely because an observation has been made in the said order permitting the petitioner to raise these contentions before the executing Court, I am of the opinion that the petitioner cannot be permitted to reagitate the issues decided in the order dt.09-12-2010 in C.R.P.No.611 of 2003 which has attained finality. It would operate as resjudicata barring the petitioner to reagitate the said issues again.
9. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.
10. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-06-2015

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