

The Hon'ble Sri Justice M.S.Ramachandra Rao

Civil Revision Petition No.3722 of 2014

Dated 30.10.2015

Order:

1. This Civil Revision Petition is filed challenging Order dt.12-06-2014 in EP.No.1 of 2014 in OS.No.140 of 2012 on the file of the learned Senior Civil Judge, Sathupalli.

2. The petitioner herein is a decree holder, who has obtained a decree for recovery of a sum of Rs.8,77,120/- with costs and interest against the respondent. The decree was passed on 31-01-2013.

3. Thereafter, EP.No.1 of 2014 was filed by the petitioner for appointment of a receiver as contemplated by Section 51 (d) of the Civil Procedure Code, 1908 (CPC). He alleged therein that the respondent-JDR had got filed a suit in OS.No.163 of 2012 through his daughter and in IA.No.836 of 2012 filed therein, an *ex parte* injunction order was granted on 31-12-2012 restraining the respondent from alienating the suit schedule property. The petitioner contended that whenever he demanded the respondent for payment of money due under the decree, he pleaded helplessness on account of the said injunction order to sell away the lands and clear off the debts. He alleged that the respondent has no interest in clearing off the debts since he had not made any effort to get the injunction order vacated.

4. The respondent remained *ex parte*. By Order dt 03-09-2014, the Court below dismissed the same on the ground that appointment of a receiver would cause hardship to the respondent and it is not fair to appoint a receiver, particularly, when the other modes of execution

for realizing the decretal amount such as detention in civil prison or attachment and sale of the property of the respondent or both, are available.

5. Challenging the same, this Civil Revision Petition is filed. Heard Sri S.Rahul Reddy, learned Counsel for the petitioner. None appears for the respondent even though notice in the Civil Revision Petition has been served on the respondent.

6. Under Section 51 of the CPC, one of the modes of executing the decree is by way of appointment of a receiver. No doubt it also contemplates execution by attachment and sale, sale without attachment of the property and also by arrest and detention in prison of a judgment debtor.

7. In the present case, on account of an injunction order granted in IA.No.836 of 2012 in OS.No.163 of 2012, filed by the daughter of the respondent, restraining the respondent from alienating the property which is the subject matter of the EP, that recourse cannot be taken for recovery of the decretal dues.

8. Since the parties are related and the JDR is the brother of the petitioner, the petitioner is not seeking his arrest and detention in prison.

9. In these circumstances, there is nothing wrong in the petitioner seeking appointment of a receiver to execute the decree, for otherwise, the decree obtained by him would remain unexecuted since OS.No.163 of 2012 might take a long time to be decided finally. If the receiver is appointed, it would also not be in violation of Order dt 31-12-2012 in IA.No.836 of 2012.

10. Therefore, I am of the opinion that the Court below is not correct in dismissing the application for appointment of receiver to manage the properties of the respondent on the ground that it would be harsh towards the respondent. Having suffered a decree, the respondent cannot claim that the said decree should not be executed on the ground that such execution amounts to hardship to him.

11. Therefore, the impugned order being perverse, it is set aside.

12. EP.No.1 of 2014 in OS.No.140 of 2012 is, accordingly, allowed and the Court below is directed to appoint a receiver to manage the properties of the respondent and recover the amounts due out of the income yielded from those properties.

13. The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

14. As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(M.S.Ramachandra Rao, J)

Dt: 30th October, 2015

LUR