

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3249 of 2014

ORDER :

Heard the counsel for petitioner and the counsel for respondent.

2. The petitioner has suffered a decree in O.S.No.37 of 2013 on the file of Senior Civil Judge, Chirala in which the decree-holder is the respondent. The said decree is a decree for payment of money.

3. The respondent had filed E.P.No.44 of 2013 to execute the said decree.

4. The petitioner filed E.A.No.203 of 2014 in the said E.P. contending that there was a settlement of the entire E.P. amount outside the Court with the respondent and that he paid a sum of Rs.3,80,000/- to the respondent in full and final settlement of the claim of respondent for which a receipt dt.16.03.2014 has also been issued by respondent. He therefore sought stay of further proceedings in the E.P. till E.A.No.118 of 2014 filed by him to raise attachment of the salary affected pursuant to the direction of the court in E.P. wherein this plea of settlement of payment, is to be decided.

5. This application was opposed by respondent

denying that any such payment was made by petitioner and also alleging that the receipt produced by petitioner is a fabricated document.

6. The court below dismissed E.A.No.203 of 2014 holding that the said application is not maintainable since Order 21 Rule 26 C.P.C. invoked by petitioner has no application to the present case.

7. The counsel for petitioner contended that the court below be directed to dispose of E.A.No.118 of 2014 filed by him to raise attachment of his salary in view of the alleged settlement between the parties; and that until E.A.No.118 of 2014 is decided and the execution of the decree be stayed, or else the whole purpose will be defeated.

8. The counsel for respondent does not dispute that E.A.No.118 of 2014 filed by petitioner to raise attachment of salary of petitioner is pending consideration before the Court below.

9. I agree with the observation of the court below that the petitioner cannot invoke Order 21 Rule 26 C.P.C. and seek stay of proceedings in the E.P., since the decree is being executed by the same court which passed the decree and not by a court to which the decree was transferred. Therefore, I do not find any merit in the Civil Revision Petition. However, since E.A.No.118 of 2014 is

said to be pending before the Court below, the Court below is directed to decide it within a period of two (02) weeks from the date of receipt of a copy of this order, positively.

10. Subject to the above directions, the Civil Revision Petition is dismissed. No order as to costs.

11. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-07-2015

Ndr/*