

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.748 of 2015

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Dated 06.03.2015

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Between:

A.Surya Kumar

...Petitioner

and

Tallita Tyagi and 2 others

...Respondents

Counsel for the Petitioner: Mr.Peri Prabhakar

Counsel for the respondents: ---

The Court made the following:

Order:

This Civil Revision Petition arises out of Order, dated 12.09.2014, in EA.No.218 of 2009 in EP.No.228 of 2008, on the file of the Court of the learned Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

The petitioner is defendant No.3 in the suit filed by respondent No.1. The suit was decreed. Feeling aggrieved thereby, the petitioner is stated to have filed an appeal. During pendency of the said

appeal, respondent No.1- decree holder has filed Execution Petition No.228 of 2008 for execution of the decree. In the said EP, the petitioner has filed EA.No.218 of 2009, purportedly, under Order XXI Rule 26 of the Code of Civil Procedure, 1908 (CPC) for stay of execution of the decree. This application has been dismissed by the lower Court.

I have heard Mr.Peri Prabhakar, learned Counsel for the petitioner, and perused the record.

Rule 26 of Order XXI CPC empowers the Court, to which a decree has been sent for execution, to stay execution of such decree for a reasonable time, upon sufficient cause being shown, to enable the judgment debtor to apply to the Court, by which the decree was passed or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution or for any other order relating to the decree or execution, which might have been made by such Court of first instance or appellate Court, if execution had been issued thereby or if application for execution had been made thereto.

From the plain language of the above Rule, it is clear that an application under the said Rule is maintainable only before the Court to which the

decree has been sent for execution. In the present case, the executing Court itself has passed the decree and therefore, the question of invoking its jurisdiction by one of the judgment debtors does not arise. At any rate, the petitioner, having filed the appeal, ought to have impressed upon the lower appellate Court to stay the execution of the decree pending the appeal.

Subject to the liberty given to the petitioner as above, this Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.986 of 2015, filed by the petitioner for interim relief, is dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 6th March, 2015
LUR