

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.2997 OF 2015

ORDER:

This revision is directed against the order dated 08.07.2015 in T.O.P.No.396 of 2014 in the Court of the Principal District Judge, Nellore.

The learned District Judge through the order impugned in the revision in exercise of his jurisdiction under Sections 21 and 24 of CPC has withdrawn E.P.No.21 of 2010 in O.S.No.34 of 2001 from the file of III-Additional District Judge (FTC) Nellore and transferred E.P.No.21 of 2010 to the I-Additional District Court, Nellore.

Sri S.Lakshminarayana Reddy, learned counsel for the petitioners, has stoutly assailed the observations of the learned District Judge, particularly the finding on delivery made by the III-Additional District Judge (FTC) Nellore. The learned counsel contends that the jurisdiction is not judiciously exercised and if the E.P is transferred with the findings as recorded in the order impugned in the revision, the revision petitioners will suffer irreparable loss and hardship in the prosecution of E.P.No.21 of 2010. The observation pointed out by the learned counsel if considered in isolation, the apprehension expressed by him cannot be obviated. But the fact of the matter is that the learned District Judge has considered every aspect of the matter and recorded cogent findings. A few of them are excerpted for rejecting the contentions urged by the learned counsel for the petitioners.

“It is also significant to point out that the judgment debtors ought to have put forth such a contention by producing the ledger extracts and other material available with them, by putting in appearance and by filing counter along with the documents on 17.7.2014 on which date they were supposed to appear, having received notice in E.A.No.4/2014. They did not do so. They did not raise many a contention which are now sought to be raised by the learned

counsel for the judgment-debtors, which need not now be delved into and considered, inasmuch as the scope of the present Transfer O.P is very very limited.

I may also point out that the petitioners /judgment-debtors, even though this Court has specifically asked to give the details of the deposits correlating the same to the Month/Months to which they represent, in a tabular form, so as to appreciate the contentions of the parties in a better way, neither the judgment debtors' counsel nor the decree holders' counsel furnished the same. Therefore, it is evident that all the parties have contributed their might for the present state of affairs, and it cannot be said that one is pious and the other is guilty. However, the fact remains that the impugned order of delivery has been passed without proper verification of the ledger extract and without proper appreciation of the contentions of the parties and orders of the Hon'ble High Court.

The other ground urged by the learned counsel for the petitioners/judgment debtors is that the learned Judge erroneously had not marked 10 (ten) documents filed by him during enquiry in E.A.No.15/2014 filed by them for recall of the orders passed in E.A.No.4/2014.

The learned Judge, in his remarks, has stated that in view of Rule 60 of the Civil Rules of Practice the documents need not be marked and, therefore, they are not marked. By this attitude, it cannot be said that there was any illegality, inasmuch as the learned Judge observed that they can be taken into consideration by convenience even though they are not marked. It is pertinent to note that marking of documents, even in interlocutory applications, is the common practice being adopted by majority of Courts, though marking of documents at that stage is not mandatory as per Rule 60 of the Civil Rules of Practice. But, by itself it cannot be said that the learned Judge has committed any illegality as has been tried to be projected by the learned counsel for the petitioners/ judgment debtors.

It appears, as seen from the entire material on record, the process of dealing with the matter, including several applications filed by the petitioners/judgment debtors had been undertaken at the cost of cordial and congenial atmosphere in the Court. It resulted in drawing of apprehensions in the minds of the parties. In view of the same, this Court is of the view that it is just

and necessary and expedient in the interests of justice, and also to follow the cardinal principle that justice should not only be done but should also appear to have been done, to withdraw the said E.P.No.21/2010 in O.S.No.34/2001 from the file of III-Additional District Judge (Fast Track Court) Nellore, and to transfer the same to any other District Court. Accordingly the point is answered.”

This Court is in full agreement with the findings recorded by the learned District Judge.

I see no error of jurisdiction, much less erroneous exercise of jurisdiction while transferring E.P.No.21 of 2010 from file of the III-Additional District Judge (FTC) Nellore.

The civil revision petition is dismissed. It is made clear that either the observations in the order under revision or confirmation by this Court shall not be treated as expressing any view on the merits required to be considered by the by the Executing Court. Hence, the observations shall be treated as limited for the purpose of transferring E.P.No.21 of 2010 from file of the III-Additional District Judge (FTC) Nellore to another Court. The transferee Court is directed to independently consider the issues between the parties and dispose of the applications uninfluenced by the observations in the order under challenge, within a period of two months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any pending also, shall stand closed.

S.V.BHATT, J

05th August, 2015
Lrkm