

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

CIVIL REVISION PETITION No.2165 of 2014

ORDER:

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This Civil Revision Petition is filed challenging the order

dt.25-08-2010 in E.P.No.4 of 2009 in O.S.No.3183 of 2004 of the

IX Additional Senior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the Decree Holder in the said suit. He had filed the said suit for recovery of a sum of Rs.2,10,000/- with interest @ 12% p.a. from the date of suit and for costs.

3. It was contested by 2nd respondent herein and on 03-04-2006, the said suit was decreed partly for a principal amount of Rs.21,366/- (gratuity) with interest @ 12% p.a. thereon from 01-07-1988 till its realization apart from costs of Rs.1,748/-.

4. This was questioned by respondents in A.S.No.270 of 2007 before the Chief Judge, City Civil Court, Hyderabad. The said appeal was dismissed on 13-08-2008 recording the statement of respondents that the total

decretal amount was paid, but observing that this fact was being disputed by petitioner; that if the entire decretal amount is paid, no purpose will be served by continuing the appeal; and therefore the appeal was dismissed. The Court however observed that if any amount is still due to petitioner, he may file calculation memo in the E.P. proceedings in the lower Court and seek redressal. It also vacated the stay of the E.P. proceedings granted by it earlier.

5. The petitioner then filed E.P.No.4 of 2009 before the IX Additional Senior Civil Judge, City Civil Court, Hyderabad seeking recovery of a sum of Rs.3,10,220/- against 1st respondent, as per calculation in separate papers appended to the E.P., by way of attachment and sale of movables of 1st respondent under Order XXI Rules 43, 64 and 65 CPC. He also annexed a schedule to the Execution Petition for attachment of movables for the amount claimed in the Execution Petition.

6. Notice was issued in the Execution Petition to respondents and a counter was filed by 2nd respondent. In the counter, it was contended that decree was passed only for an amount of Rs.21,366/- with interest @ 12% p.a. from 01-07-1998 till realization with proportionate costs,

and that an amount of Rs.70,547/- was deposited in the Court by way of a demand draft No.770483 dt.06-01-2007 drawn on S.B.I., Kurnool Branch representing the principal amount of Rs.21,366/- and interest @ 12% p.a. thereon from 01-07-1998 to 31-12-2006 (18 years 6 months) amounting to Rs.47,433/- apart from costs of Rs.1,748/-. It was alleged that petitioner had calculated interest not on the basis that it was simple interest but on the basis that it was compound interest and the claim of the petitioner is not sustainable.

7. By order dt.25-08-2010, the said E.P. was dismissed. The Court below held that the plea of petitioner that a set-off or counter-claim filed by him before the appellate Court under Order XLI Rule 33 C.P.C. has to be taken as having been allowed, cannot be accepted. It referred to the order passed by the appellate Court and held that the appellate Court did not hold that the petitioner was entitled for the amounts mentioned in the calculations filed along with the E.P.; the calculations were made by petitioner showing interest on pension arrears, interest on commuted value of pension, interest on pay arrears, interest on S.P.P. arrears besides balance liable in E.P., totaling to Rs.3,10,220/-; these items are not forming part of decree in O.S.No.3183 of 2004 wherein

the decree was passed only for the gratuity amount of Rs.21,366/- with interest @ 12% p.a. from 01-07-1998 till realization only; and there was no direction in the judgment of the appellate Court directing the Executing Court to accept the calculation of petitioner claiming Rs.3,10,220/-, which was not his case at all even in the said suit. It held that the Executing Court cannot go behind the decree. It also observed that if the petitioner was aggrieved by the judgment of the trial Court, he should have filed cross appeal before the appellate Court by paying necessary Court fee, and should have obtained some orders from the appellate Court for the portion of claim not granted by the trial Court; and since he has not filed any cross appeal by paying Court fee, mere filing calculation memo would not entitle him for the amount shown. It also held that if petitioner is attacking the decree, then he must file cross objections and since he did not do so, he is not entitled to any relief in the E.P. for the amount claimed in the calculation memo. It also held that it had calculated the amount as per the decree passed on 03-04-2006 in O.S.No.3183 of 2004 and that the amount deposited by respondents, which had been received by petitioner, is sufficient to satisfy the decree.

8. Challenging the same, this Revision is filed.

9. Party-in-person/Decree Holder contended that the observations in the judgment of the appellate Court amount to granting a counter-claim in his favour for the amount of Rs.3,10,220/-, even though decree of the trial Court is only with regard to Rs.21,366/- towards the gratuity.

10. I am unable to agree with the said submission. If petitioner is dissatisfied with the decree of the trial Court and is attacking the decree and seeking further relief which had been denied to him by the trial Court, he should have either filed a separate appeal or filed cross objections by paying Court fee to the extent he is seeking further relief in appeal. He did not do so. Therefore, the appellate Court judgment dismissing the appeal filed by respondents cannot be construed as a decree in favour of petitioner for the amount claimed by him in the calculation memo i.e. for Rs.3,10,220/-. Merely because the appellate Court made an observation that if the petitioner is dissatisfied, he may file a calculation memo in the E.P. proceedings in the lower Court and seek redressal, the petitioner cannot say that whatever is mentioned by him in the calculation memo has to be paid by respondents. The appellate Court never said that calculation memo filed by petitioner has to be accepted and the amount claimed

thereunder has to be paid. The attempt of the petitioner appears to be to get more amount than what is mentioned in the decree dt.03-04-2006 in O.S.No.3183 of 2004 in the Execution proceedings. The Executing Court cannot go behind the decree and grant more amount than what is payable to petitioner under the decree.

11. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

12. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 18-08-2015

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