

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL REVISION PETITION NO.3402 OF 2016
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ORDER:

This petition is filed under Article 227 of the Constitution of India challenging the order dated 02.06.2016 passed in I.A.No.290 of 2015 in O.S.No.44 of 2005, which was filed for grant of stay of all further proceedings in view of dismissal of earlier suit O.S.No.95 of 1988. The parties and the property involved in both the suits are one and the same and the decision in O.S.No.95 of 1988 operates as res judicata. Therefore, the claim in the present suit is hit by Section 11 of Code of Civil Procedure and prayed for stay of all further proceedings.

The petition under Sections 10, 11 and 151 of Code of Civil Procedure was filed to grant stay of trial in O.S.No.44 of 2005. To grant stay in a suit, the issue involved in the suit must be directly or substantially in dispute in a pending suit before the Court. Admittedly, the earlier suit O.S.No.95 of 1988 was already dismissed and attained finality, as such no suit or appeal pending against the earlier suit between the same parties with regard to the same property. Therefore, the question of grant of stay by exercising power under Section 10 of Code of Civil Procedure does not arise and the remedy available to the petitioner is otherwise. Hence, I find no ground to exercise power under Section 227 of Constitution of India, to set aside the order passed by the trial Court in I.A.No.290 of 2015 in O.S.No.44 of 2005 dated 02.06.2016

The revision is, accordingly, dismissed. No order as to costs. The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.07.2016

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