

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2920 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India, challenging the orders passed by the Executing Court in E.A.No.22 of 2016 in E.P.No.12 of 2015 in RCC No.1 of 2009 dated 25.04.2016, whereby stay of execution was granted under Order XXI Rule 26 of the Civil Procedure Code.

For convenience sake, the parties will be referred throughout the order as arrayed in E.A.No.22 of 2016.

Petitioner herein is the decree holder and respondents herein are the judgment debtors. It is the case of the petitioner that during pendency of the rent appeal filed against the eviction order, the tenant died and the appeal was dismissed as abated on 21.04.2015. Later, the petitioner filed execution petition and the respondents approached the Executing Court by way of petition under Order XXI Rule 26 of C.P.C on the ground that they proposed to approach the Appellate Court to file an application to set-aside the abatement order along with the application to condone delay under Section 5 of the Limitation Act.

Section 15 is the relevant provision which governed execution of decrees (under Rent Control Act), but there is no provision for grant of stay of execution in A.P. Rent Control Act, except in an appeal or revision. The petitioner filed the present petition under Order XXI Rule 26 of C.P.C which permits the executing Court to grant stay of execution of the decree enabling

the legal heirs of the deceased to file a petition to condone delay under Section 5 of the Limitation Act.

Admittedly, the respondents herein filed a petition on 03.02.2016 and till today, it is not registered as interlocutory application. Even if Order XXI Rule 26 C.P.C is applied to the execution proceedings under Rent Control Act, the Court has to grant limited stay only to enable the respondent to file an application. Here the respondent filed an application and did not obtain any stay from the Appellate Court. Therefore, the powers of the Executing Court are limited and stay cannot be granted till termination of the proceedings in the Appellate Court or in the original court. After filing the petition before the Executing Court almost four months has been elapsed and by now, eight months period has been elapsed.

Therefore, I find no justification to continue the stay granted by the Executing Court and the same is hereby vacated. Hence, the order passed in E.A.No.22 of 2016 in E.P.No.12 of 2015 in RCC No.1 of 2009 dated 25.04.2016 is set-aside.

In the result, the civil revision petition is allowed.

Consequently, miscellaneous applications pending if any shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.08.2016

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