

THE HON'BLE SRI JUSTICE SURESH KUMAR KAITH

C.R.P No.3024 OF 2016

ORDER:

Vide the present petition, the petitioner has challenged the order dated 28.03.2016, whereby, E.A.No.170 of 2015 in E.P.No.149 of 2014 in O.S.No.278 of 2013 on the file of Additional Senior Civil Judge, Narasaraopet, Guntur District (for short "the lower Court"), filed by the petitioner has been dismissed.

2. The grounds of present petition are that:

The lower court erroneously dismissed the application filed for sending the document to the expert opinion for comparison of signature on the receipt dated 05.01.2015, on the ground that the uncertified document sending to the expert is not correct and the lower court construed the provision harshly despite the several observations made by the Law of the land in that particular aspect. Accordingly, the lower court went wrong in interpreting the provision under Order XXI Rule 2 (3) of Code of Civil Procedure that non recognition of the payment is not eligible for sending the document to the expert opinion, is not the intention of the legislation.

3. Learned counsel appearing on behalf of petitioner submits that the lower court has decided the application on Hyper technical despite the question of fact regarding genuinity of the signature on receipt dated 05.01.2015. Moreover, neither exercised its power under Section 73 of Evidence Act nor sent the document to the expert opinion, which amounts to refusing just relief merely because of some mistakes in recording the payment under Order XXI Rule 2(3) of CPC.

4. It is not in dispute that the petitioner is the Judgment Debtor and decretal amount is Rs.6,63,254/- as per decree dated 25.10.2013. It is also not in dispute that during the enquiry in E.P. No.149 of 2014 at the stage of Rule 54, the petitioner/J.Dr came with receipt dated 05.01.2015 alleged to be issued by the D.Hr under receipt made by

petitioner/J.Dr as compromise of the subject matter of the E.P. proceedings. It is alleged that the same was issued by the D.Hr and he discharged the entire decretal debt. In order to prove the genuineness of the above receipt, the petitioner himself is examined as RW.1 and also on his behalf RWs.2 to R4. At the stage of adducing the evidence and when RWs. 1, 3 and 4 are cross-examined and only RW.2 cross-examination was left, the petitioner filed the E.A.No.170 of 2015 alleging that the said receipt has to be sent to the expert to prove that the signature appears on the receipt as executant is that of the signature of the DHr.

5. The case of the petitioner/D.Hr before the lower court was that the payment under the above receipt was uncertified payment and if any such payment is there it has to be recorded by the court under Order XXI Rule 1 CPC. Accordingly, the lower court has opined that when the receipt itself is not valid, then sending the same to the expert is not correct and consequently the petition filed by petitioner was dismissed.

6. Learned counsel for the petitioner/J.Dr before lower court relied upon a decision of the Hon'ble Supreme court reported in **Padmaben Banushali and another Vs. Yogendra Rathore and others**^[1], wherein, it is a decision under Order XXIII Rule 1 and Order XXI Rule 2 CPC and while discussing *inter alia* the Hon'ble supreme Court discussed *Section 47 and Order 21 Rule 2(3) power of executing court and held that the general power of executing court to decide all questions relating to execution, discharge or satisfaction of decree but restraint placed on exercise of that power by special provisions that executing Court shall not recognize or look into any uncertified payment of money or any adjustment of decree. It is also held that if any such adjustment or payment is pleaded by J.Dr., the court has to ignore it on the ground of its being not certified or recorded*

by the court.

7. Undisputedly in the present case also, the petitioner/J.Dr pleaded discharge of over all decretal amount, but he did not get the payment certified. As per Order XXI Rule 2(3) of CPC, the un-certified payment of money or any adjustment of decree shall be ignored and shall proceed with the execution proceedings.

Order XXI Rule 1 of CPC describes the modes of paying money under decree and **Order XXI Rule 2** of CPC describes payment out of court to decree- holder.

Learned counsel for the petitioner has relied upon **Order XXI Rule 2 (3)**, which reads as under:

“A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.”

8. As seen from the record, the petitioner has failed to establish that the receipt was certified and mode of payment is as per Order XXI Rule 1 of CPC. Moreover, receipt dated 05.01.2015, does not state about the mode of payment of Rs.1,50,000/- alleged to be paid to the Decree Holder. Since the receipt is not certified or mode of payment is not recorded, I find no discrepancy or illegality in the order passed by the lower court.

9. For these reasons, I am of the view that this revision is devoid of merits and liable to be dismissed.

10. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any pending, in this revision shall stand dismissed.

JUSTICE SURESH KUMAR KAITH.

Date :29-06-2016
Gvl

[\[1\]](#) 2006(4) ALT 51 SC