

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.1870 OF 2010

ORDER:

This revision, filed under Article 227 of the Constitution of India, challenges the order dated 08.06.2009, passed by the learned II Additional Senior Civil Judge, Fast Track Court, Guntur, in E.P.No.335 of 2008 in O.S.No.463 of 2001.

2. Heard Sri M.V.Durga Prasad, learned counsel for the petitioner and Sri Sai Gangadhar Chamorthy, learned counsel for the respondent.

3. Petitioner herein instituted O.S.No.463 of 2001 on the file of the Court of II Additional Senior Civil Judge, Fast Track Court, Guntur, for recovery of money on the basis of khata. The said suit was decreed on 20.06.2006 and the said decree became final. On 04.12.2008, the decree holder/petitioner herein filed E.P.No.335 of 2008, praying for enforcement of the said decree by way of attachment and sale of the petition schedule property. The judgment debtor/respondent herein, resisted the said E.P. by way of filing a counter. The learned II Additional Senior Civil Judge, Fast Track Court, Guntur, by way of an order dated 08.06.2009, dismissed the said execution petition. The validity and legal sustainability of the said order passed by the court below is under challenge in the present revision.

4. It is contended by the learned counsel for the petitioner that the order under challenge is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 21 of the C.P.C., and the provisions of Companies Act. It is further submitted by the learned counsel that though the petitioner/decreed holder filed documents to substantiate his case, the learned II Additional Senior Civil Judge, did not consider the said documents from proper perspective. It is further submitted by the learned counsel that in view of the provisions of Section 23 of the Companies Act, it is imperative on the part of the respondent herein to clear the subject debt. It is further submitted that the court below grossly erred in placing complete reliance on Ex.R1 declaration, as the same cannot be sustained in the teeth of the Exs.P1 and P2 and the provisions of Section 23 of the Companies Act.

5. On the contrary, it is contended by the learned counsel for the respondent that there is absolutely no error nor there exists any infirmity in the impugned order and in the absence of the same, the order under challenge is not amenable for any judicial review by this court. It is further submitted by the learned counsel that in view of the Ex.R1 document, the respondent herein cannot be fastened with any liability arising out of the decree. It is further submitted that the court below is justified in dismissing the execution petition. It is also the submission of the learned counsel that as the

court below assigned valid reasons for arriving at the conclusions, the interference of this Court is not warranted.

6. In the above backdrop, now the question that arises for consideration of this Court is:

“Whether the order under challenge is sustainable and tenable and whether the same warrants any interference of this Court?”

7. The information available before this Court manifestly discloses that the court below decreed the suit on 20.06.2006 and the said decree became final. Praying for execution of the said decree, on 04.12.2008, the petitioner herein filed the present application for recovery of a sum of Rs.4,92,021/- (rupees four lakhs ninety two thousands twenty one only), by way of sale of the petition schedule property. A perusal of the order under challenge candidly discloses that the learned Senior Civil Judge, except referring Exs.P1 and P2, did not undertake any exercise in the direction of examining the impact of the said documents on the issue involved in the case. In fact, the documents filed by the petitioner herein show various aspects, including the amalgamation of the companies. It is very much obvious from a reading of the impugned order that the learned Senior Civil Judge did not consider the said aspects. On the other hand, the learned Senior Civil Judge, completely relied on Ex.R1 declaration. This exercise undertaken by the learned Senior Civil Judge, in the considered opinion of this Court, cannot be sustained in

the eye of law. In fact, the learned judge ought to have considered all the documents and their effect on the issue from proper perspective.

8. In view of the above reasons, this Court deems it appropriate to remand the matter for fresh consideration, in accordance with law, by setting aside the order under challenge.

9. For the aforesaid reasons, civil revision petition is allowed, setting aside the order dated 08.06.2009, passed by the learned II Additional Senior Civil Judge, Fast Track Court, Guntur, in E.P.No.335 of 2008 in O.S.No.463 of 2001 and consequently, the said E.P.No.335 of 2008 stands restored to file and the court below shall consider the issue afresh, after giving notice and opportunity to all the stakeholders. It is also made clear that the interim injunction order granted by this Court on 30.07.2010 shall continue to operate pending such exercise.

10. Miscellaneous petitions pending consideration, if any, in this petition stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

23.12.2016
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