

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.5783 OF 2015

ORDER :

The revision petitioner is the decree holder in O.S.No.1 of 2014 on the file of I Additional Chief Judge, City Civil Court, Secunderabad, vide, decree dated 24.03.2005. The decree shows that the defendants 1 to 3 remained expart on service. It is to say that it is an exparte decree and the same was transferred for execution to the Chief Judge, City Civil Court, Hyderabad and after receiving the same within six months statutory period, E.P.No.2 of 2014 in the transfer Court was filed and it is pursuant to which the relief sought for recovery of the amount by proceeding against the movable property of the Judgment Debtor.

It is subject to Rule 22 CPC compliance for E.P. filed beyond two years from the date of decree, the executing Court can proceed with as per the transfer decree. The Judgment Debtor filed E.A.No.76 of 2014 and the learned Chief Judge, City Civil Court, -cum-(FAC) II Additional Chief Judge, Hyderabad by order dated 29.09.2015 passed an order granting indefinite stay, no doubt, after hearing both sides. Order 21 Rule 26 CPC power of the executing Court of the transfer decree under execution, no doubt, enables to grant stay, in the meantime, to enable the judgment debtor if at all to file any application and obtain order on the original side. The judgment debtor claimed that he filed application under Order 9 Rule 13 CPC with Section 5 Limitation application to condone the delay in filing the said application for nearly about 3600 days or so. The judgment debtor if at all got merits as to obtain stay in that original side application supra and not for any indefinite period from the executing Court by invoking

Rule 26 Order 21 CPC that too when sub-rule 3 of Rule 26 of Order 21 CPC mandates like under Order 41 Rule 5 CPC of furnishing security or to comply with such directions or conditions to be imposed while granting stay for restitution or the like, the same was not even considered by the executing Court in granting indefinite stay thereby it is per se unsustainable.

Having regard to the above, the revision petition is disposed of setting aside the order, however, enabling the judgment debtor to obtain any stay in the original side within two months from today. It made clear that in the mean time, the decree holder cannot proceed further in the EP, but for after expiry of said two months time from today if no stay granted. There is no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the revision shall stand closed.

Dr.B.SIVA SANKARA RAO,J

04.08.2016
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