

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.4065 of 2016

ORDER:

This Civil Revision Petition is filed aggrieved by the order dt.25.07.2016 in E.A.No.103 of 2016 in E.P.No.129 of 2016 (wrongly typed as E.P.No.123 of 2016) in O.S.No.572 of 2009 passed by the Principal Junior Civil Judge, Khammam, whereby the learned Executing Court has granted police protection to the respondent/D.Hr/Plaintiff in implementing the decree.

2) Heard arguments of Sri T.S.Praveen Kumar, learned counsel for petitioners and Sri M.M.M.Srinivasa Rao, learned counsel for respondent and with their consent this CRP is disposed of at the admission stage.

3) The grievance of the petitioners/J.Drs is that the decree in O.S.No.572 of 2009 which was a permanent injunction decree, was passed on 25.09.2013 but the Execution Petition was filed only on 15.07.2016 i.e, more than two years after passing of the decree and in such an event, the Executing Court ought to have in compliance with the procedure under Order 21 Rule 22 of CPC issued show cause notice to the petitioners/J.Drs seeking their explanation as to why the decree should not be executed against them but this mandatory procedure was violated by the Executing Court and on the other hand, while registering the E.P, the Executing Court on the request of the D.Hr passed an order

in E.A.No.103 of 2016 granting police aid against the petitioners/J.Drs and thereby putting them in much hardship. Thus the petitioners prayed to set aside the order dt.25.07.2016 in E.A.No.103 of 2016.

4) On the other hand, learned counsel for respondent/D.Hr/plaintiff submitted that after filing of the E.P on 15.07.2016, the Court in fact issued notice under Order 21 Rule 22 CPC to the petitioners/J.Drs and thereafter passed order in E.A.No.103 of 2016 and therefore, the proceedings in E.P were perfectly valid in terms of Order 21 Rule 22 of CPC and hence, the CRP is not maintainable.

5) It is seen that along with the material papers, the petitioners/J.Drs filed a copy of the notice dt.27.07.2016 issued by the Executing Court in E.A.No.103 of 2016, and would contend, except the said notice, the Court did not issue any notice under Order 21 Rule 22 CPC in the main E.P. The respondent/D.Hr has not produced any proof showing, apart from issuing notice in E.A.No.103 of 2016, the Executing Court has also issued notice in main E.P under Order 21 Rule 22 CPC to the petitioners/J.Drs to show cause why the decree should not be executed. Hence, there is no other go for this Court except presuming that the Executing Court did not issue show cause notice immediately after registering the E.P and before passing any orders in the E.P. Therefore, for the procedural violation, the order in E.A.No.103 of 2016 is liable to be set aside as prayed for.

6) In the result, this C.R.P. is allowed and the impugned order dt.25.07.2016 in E.A.No.103 of 2016 in E.P.No.129 of 2016 (wrongly typed as E.P.No.123 of 2016) in O.S.No.572 of 2009 on the file of Principal Junior Civil Judge, Khammam is set aside and the Executing Court is directed to issue a show cause notice to the petitioners/J.Drs under Order 21 Rule 22 CPC within two(2) weeks from the date of receipt of a copy of this order and after receiving their counter objections if any within two(2) weeks from the date of their receiving notice, enquire into the matter and pass necessary orders in the E.P on merits. No order as to costs.

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

Dt: 02.09.2016

scs

JUSTICE U.DURGA PRASAD RAO

