

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P.No. 4763 of 2015

ORDER :

The petitioner herein is no other than decree holder of O.S. No.4 of 2012, in which money decree obtained against late 1st defendant and defendants 2 and 3, who are no other than wife and son of late 1st defendant. It is in execution of the money decree, decree holder filed E.P. No.3 of 2013 on the file of Senior Civil Judge, Parchur, transferred from Senior Civil Judge, Narsaraopet, as executing Court to recover the decree debt by bringing the immovable property of the judgment debtor to sale. It is impugning the decree in question, pending E.P, the judgment debtors 2 and 3 being the legal representatives of judgment debtor also, appears filed A.S. No.33 of 2013 on the file of XIII Additional District Judge, Narsaraopet. Undisputedly, the appeal ended in dismissal for default on 25.02.2015. It appears that the appellants filed application for restoration which is at unnumbered stage because of the delay occurred in filing the application for consideration still pending under Order XLI Rule 3A C.P.C read with Section 5 of the Limitation Act as the case may be.

2) In fact, pending the appeal and pending the execution petition, the Judgment debtors deposited the decree debt which is lying to the credit of E.P. The revision is filed against dismissal of the cheque petition filed by the decree holder in E.A. No.57 of 2014 by docket order of the lower Court. The amount deposited under the decree even lying of Rs.3,16,923/- . The decree holder is automatically entitled, unless there is any stay as on date. There is no such stay even from any superior Court, muchless under Order XLI Rule 5 C.P.C pending the appeal. It is thereby, said dismissal of the permission to withdraw by cheque petition the amount that belongs to the decree holder under execution of the decree as unsustainable. Even the J.Dr served with notice through advocate on record of the executing Court, there is no response even granted time sufficiently. The registered post notice ordered before this Court in the revision is received by the 2nd J.Dr, W/ o.1st J.Dr. and mother of 3rd judgment debtor and so far as 3rd judgment debtor, it is even received intimation, continuously absent and thereby returned.

3) Once, it is the same address of the judgment debtors and that is one claimed by the mother and that other left unclaimed by the son, that is also a sufficient with reference to the same of their conscious knowledge about the

proceedings and withhold their presence, for reasons better known, before this Court.

4) Heard and perused the material on record.

5) The impugned order of the lower Court is to be set aside for no way sustainable for no any stay that too when the J.Dr, deposited the amount before the executing Court due to the decree holder and E.P. was terminated consequently the decree holder is automatically entitled to it. Even pendency of an appeal no way prevents the executing Court from return of the amount due to the decree holder, but for if there is any stay. Once such is the case, the appeal itself is when ended in dismissal and not yet restored, because of application to condone the delay in filing restoration application is still pending; from perusal of the material on record, but for at best to ask for furnishing of security by the decree holder to specify in the event of reversal of the trial Court's decree by the appellate Court if any, for restitution and beyond it no more condition even can be imposed for withdrawal.

6) Accordingly, in the result, the revision is allowed and the order dated 14.09.2015 passed in E.P. No.3 of 2013 in O.S. No.4 of 2012 on the file of Senior Civil Judge, Parchur is set aside and the decree holder/ revision petitioner is permitted to withdraw the amount with interest, if necessary to call for

from the deposit and on adjustment to civil Court's deposit allow cheque petition to pay the entire amount, subject to furnishing of immovable property security by execution of a bond on Rs.100/- non-judicial stamp paper in favour of the Court for its in turn to submit to the trial Court, so as to bind the decree holder, in the event of success by the judgment debtor in future in the event of restoration of the appeal and reversal of trial Court's decree and Judgment for restitution. There shall be no order as to costs. Pending miscellaneous petitions, if any, in both the appeals shall stand cancelled.

06.09.2016
ksh

Dr. B. SIVA SANKARA RAO, J

