

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3758 of 2015

ORDER:

Respondent No.1 herein has filed O.S. No.213/2005 on the file of the Court of the learned Senior Civil Judge, Khammam, seeking partition of the suit A and B schedule properties into two equal shares, for allotment of one such share to her, to put her in possession of her share, and for mesne profits over the suit schedule property from the date of suit till the date of realisation. The said suit was decreed on 23.02.2015. Challenging the said judgment and decree, defendant No.7 in the suit filed A.S. No.37/2015 before the Court of the learned Principal District Judge, Khammam. He also filed I.A.No.576/2015 seeking stay of all further proceedings of decree in O.S. No.213/2005 dated 23.02.2015. The lower appellate Court passed the following order:

“Granted stay of the decree in Appeal on the following conditions:

a) The Petitioner/Appellant has to deposit the costs awarded by the Court on or before dt.12.6.2015, on such deposit the successful plaintiff can withdraw the same without furnishing any security.

b) The final decree proceedings can go ahead, but, the passing of final decree is stayed.

c) The Appellant has to furnish security for due performance of decree or order as may ultimately be binding up on him, as contemplated under order 41 Rule 5(3) C C.P.C. by way of his Affidavit and by way of Affidavit of 3rd Party on or before dt.12.6.2015.”

The certified copy of the order does not indicate the date of the order.

Though the petitioner has filed a third-party affidavit giving security for due performance of the decree, he could not deposit the suit costs within time, and hence, he filed I.A.No.755/2015, seeking enlargement of time for a period of 20 days for compliance of the orders passed in I.A. No.576/2015. The said

application was dismissed, and for non-compliance of conditions, I.A.No.576/2015 itself was dismissed on 15.06.2015. Challenging the order dated 15.06.2015, the present Civil Revision Petition was filed.

In pursuance of the interim order passed by the lower appellate Court, the petitioner filed a third-party affidavit on 12.06.2015 as directed by the lower appellate Court. However, with regard to the suit costs, now the petitioner is ready to deposit the suit costs.

In the circumstances, time for depositing the suit costs is granted upto 20.01.2016. On such deposit, there shall be stay of passing of final decree only, but the proceedings of final decree can go on.

Accordingly, this Civil Revision Petition is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

04.01.2016
MVA