

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.2318 of 2016

ORDER:

Heard the learned counsel for the petitioner.

2. This Revision Petition is filed challenging the order dt.21-04-2016 in I.A.No.293 of 2016 in A.S.No.36 of 2015 passed by the III Additional District Judge, Bhimavaram, West Godavari.

3. Petitioner is the D.Hr. in O.S.No.24 of 2007 filed by him before the Senior Civil Judge, Bhimavaram which has been decreed on 06-08-2015 granting relief for recovery of possession of the property which was in the possession of the respondents and directing the respondents to pay damages prior to suit as well as the subsequent to suit and costs.

4. Petitioner filed I.A.No.293 of 2016 in the said appeal under Order 41 Rule 1 (3) and Section 151 CPC to direct the 1st respondent/appellant in the said appeal to deposit an amount of Rs.6,68,400/- and costs of Rs.12,665/- which had been granted in the decree passed by the trial Court.

5. Petitioner contended that 1st respondent is a non-resident Indian and would leave India and so he cannot recover the decretal amount from him and that was

why the Court should direct 1st respondent to deposit the above amount.

6. Counter affidavit was filed by 1st respondent opposing this application. In the counter, it is stated that 1st respondent had already submitted arguments in the appeal and at that stage this application is filed only with an intention to delay the disposal of appeal. He also disputed delivery of possession to the petitioner in E.P.No.71 of 2015 as claimed by the petitioner. He contended that the decree obtained is not a decree for payment of money and it was a decree for recovery of possession and in such a situation, there is no question of depositing any amount in the Court. He also denied that he was proclaiming to be a non-resident Indian and he was likely to leave India suddenly on that it would be difficult for the petitioner to recover the amount claimed.

7. By order dt.21-04-2016, the Court below dismissed the said application. The Court below held that 1st respondent had denied about the delivery of possession to the petitioner. Though written arguments were also submitted by 1st respondent on 31-03-2016, petitioner did not submit his arguments in the appeal and filed this petition.

8. Challenging the same, this Revision Petition is filed.

9. Learned counsel for the petitioner reiterated that 1st respondent herein who is appellant in the appeal A.S.No.36 of 2015 pending before the lower appellant Court is a non-resident Indian, that he was likely to leave India and then it is impossible for the petitioner to recover the amount decreed.

10. It is not disputed that the decree granted by the trial Court has not been stayed in the appeal. There is no impediment to the petitioner to execute the decree for payment of amount by the respondents to the petitioner in the manner provided in the Civil Procedure Code, 1908. At the stage when the arguments in the appeal have been heard, the petitioner ought not to have filed this application.

11. Therefore, the Civil Revision Petition is dismissed granting liberty to the petitioner to take steps for execution of the judgment of the trial Court insofar as the trial Court had awarded damages and costs to the petitioner. This shall be subject to the result of the appeal A.S.No.36 of 2015 pending before the III Additional District Judge, Bhimavaram, West Godavari District. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-06-2016

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