HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2653 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt. 13.04.2016 in E.P.No.272 of 2014 in O.S.No.290 of 2011 on the file of V Senior Civil Judge, City Civil Court, Hyderabad, whereby the attachment of the suit schedule property was ordered overruling the objections filed against the attachment Order.

2. The respondents herein/petitioners/DHrs filed Petition/E.P.No.272 of 2014 under Order 21 Rule 43 of Code of Civil Procedure (for short 'CPC') for realization of the Decretal amount while attaching the movables viz., (1) Diaya Printing Machine 22 x 32 inches size; (2) Demmy Printing Machine 18 X 23 inches paper cutting machine; (3) Books Power Pinning Machine; (4) Lamination Machine; (5) Two computer Monitors, CPU and Printers which are located at M/s Vishual Graphics and Printers H.No.1-1-300/B, Street No.13, Ashok Nagar, Himayathnagar, Hyderabad belonging to J.Dr/defendant, alleging that revision petitioner/J.Dr failed to discharge the debt due under the decree in O.S.No.290 of 2011 dt. 14.02.2014 to an extent of Rs.2,89,697/-.

3. It is contended by the respondents herein/Decree Holders that in the judgment dt. 14.02.2014 in O.S.No.290 of 2011, the trial Court directed the revision petitioner/defendant/J.Dr to vacate the schedule property and pay arrears of rent relating to suit schedule property from July, 2010 to January, 2011, but the J.Dr had vacated the premises only on 19.06.2011 without payment of arrears of rent and therefore, they sought for attachment of movable property and for sale of the same for realization of the debt due under the decree.

4. The J.Dr/revision petitioner resisted the claim of the D.Hr on various grounds and mainly contended that an appeal is filed against the judgment in O.S.No.290 of 2011 and it is numbered as A.S.SR.No.10393 of 2014. She also further contended that a refundable deposit of Rs.50000/- is lying with D.Hr and the same was not taken into consideration while calculating the amount due under the decree. It is further contended that the J.Dr deposited an amount of Rs.18,424/- on 03.08.12, as per the Orders in I.A.No.3127 of 2012 in A.S.No.179 of 2012 on the file of Chief Judge, City Civil Court, Hyderabad, which is sought to be withdrawn by the present respondent in I.A.No.3/2015 in O.S.No.290 of 2001 and that the respondents/D.Hrs holding total amount of Rs.68,424/-. The decree holders included the amount payable towards electricity

consumption, municipal taxes to the Decretal amount, they is not entitled to and, at best, they are entitled to Rs.90.094/- after deducting the amount deposited or paid on the balance of Rs.21,670/-.

5. Upon hearing argument of both the counsel, the trial Court rejected the contention of the revision petitioner/J.Dr and ordered attachment of movables.

6. Challenging the Order passed by the Executing Court, the present Revision Petition is filed under Article 227 of the Constitution of India raising several contentions. The only ground urged before this Court during hearing is that calculation at enhanced rate, is contrary to the decree, it is erroneous and that calculation memo filed by the respondents herein/petitioners/D.Hrs and accepted by the Executing Court is not in accordance with law and drawn the attention of this Court to several amounts like Junior Advocate Fee of Rs.10,000/- and the interest of Rs.25,000/- etc., which comes to Rs.2,54,677/-; whereas the Executing Court ordered attachment calculating arrears at Rs.5,74,000/- and it is erroneous on the face of the record and prayed to set aside the Order passed by the Executing Court.

7. As seen from the decree, the trial Court passed the decree directing the J.Dr/revision petitioner to vacate the

suit schedule property and deliver vacant possession of the schedule property within one month from the date of judgment and further declared that the plaintiff is entitled to arrears of rent from July, 2010 to January, 2011, but the Executing Court calculated the rent based on the Calculation Memo dt. 2.12.2015 filed by the respondents herein. When the decree is silent as to what is the actual amount the D.Hr is entitled, the basis for calculation must be the agreement of lease, if any, between the plaintiff and defendant i.e.,. DHr and J.Dr/revision petitioner. But, without adverting to any such document, the Executing Court calculated the amount with increase of Rs.500/- for different months and similarly the Executing Court overlooked the Property Tax payable for schedule property at Rs.1,15,020/-, which is not included in the Decretal amount though there was no decree for payment of Property Tax etc., In such a case, again the Court has fall back on the agreement of lease, if any, between the plaintiff and the Defendant.

8. Learned counsel for respondents contended that for the first time, the revision petitioner raised certain contentions, which are not permissible under law, since such contention was not raised before the Executing Court regarding the calculation etc.,

9. Curiously, in the present case, the revision petitioner filed calculation memo and even the Executing Court also did not base the calculation on any agreement for enhancement of Rs.500/- per different months, but based on the calculation memo filed by the D.Hr, the Executing Court arrived at such figure, which is inclusive of the property tax payable for the premises. The decree is silent with regard to liability of the J.Dr for payment of monthly taxes, but only the Trial Court declared that the plaintiff is entitled to arrears of rent for a particular period. Therefore, passing an attachment order for recovery of property tax payable for the premises is erroneous and if there is any agreement between the parties for payment of property tax, the Executing Court has to calculate the liability of the J.Dr based on the terms and conditions contained in the agreement, if any, between the revision petitioner and respondent. The order of the Executing Court is not based on any agreement but based on the calculation memo filed by D.Hr ignoring the calculation memo of J.Dr, at the same time, inclusion of Rs.1,000/- towards property tax is not part of the decree, as seen from the copy of the decree filed along with the petition, but it is always subject to the agreement of lease between the parties. Therefore, the calculation arrived by the Executing Court, *prima facie* erroneous and the Executing Court traveled beyond the

decree, which is not in permissible under law. Therefore, the Order of the Executing Court in E.P.No.272 of 2014 in O.S.No.290 of 2011 on the file of V Senior Civil Judge, City Civil Court, Hyderabad, is hereby set aside while directing the Executing Court to take into consideration the calculation Memo filed by the revision petitioner/J.Dr along with calculation memo of D.Hr and decree and other payments, if any, made by the J.Dr., and pass appropriate Order on merits.

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

M. SATYANARAYANA MURTHY, J

Date: 07-09-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRP No.2653 of 2016

Dt. 07-09-2016

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