

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1221 of 2011

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure by the Judgment Debtor is directed against the orders dated 28.01.2011 and 28.03.2011 of the learned Junior Civil Judge, Kaikalur passed in EP.no.4 of 2010 in OS.no.8 of 1992.

2. I have heard the submissions of the learned counsel for the revision petitioner/Judgment Debtor ('the JDr', for brevity). Respondent no.1 died as per cause title. Though the 2nd respondent is served with the notice, none appeared. I have perused the material record.

3. The facts, as borne out by the record and as per the submissions made before this Court, in brief, are as follows:

The DHrs filed a suit in OS.no.8 of 1992 on the file of the Court of the learned Junior Civil Judge, Kaikalur. On a reference to the Lok Adalat, the matter was amicably settled and an Award dated 15.08.1997 was passed in the suit by the Lok Adalat. The Award, which is having the status of a decree of a civil Court, contains the following terms, which include the terms to be complied with by the JDr: '*The defendant shall leave 1 ½ feet width land on the eastern side boundary of the defendant's land through out the boundary for the purpose of drainage bode. The plaintiffs have no right over the bunds of the bode. The plaintiffs have to let out drainage water only through the said bode. Both parties agreed that the plaintiffs are to close the vent to prevent the discharge of drain water into the bode when the defendants are disclosing the drain water into the bode. Similarly, the defendant shall close the vents when the plaintiffs are discharging the drainage water into the said bode.*' [Reproduced verbatim]. As the JDr had failed to honour the decree/Award, the 2nd DHr (since 1st DHr died) had filed the

execution petition for arrest of the JDr. The Court below by the order dated 28.01.2011 having observed that the JDr, who is very well aware of the EP proceedings, had failed to turn up before the Court without any just and sufficient cause and that there are valid and sufficient grounds to grant the relief, had ordered for the arrest of the JDr and directed issuance of a warrant of arrest against him for committal to civil prison for a period of one month on payment of process and subsistence allowance by the DHr. On production of the JDr pursuant to the execution of the warrant of arrest issued against him, the Court below by order dated 28.03.2011 had directed the DHr to deposit subsistence allowance to send the JDr to civil prison, as ordered on 28.01.2011, and to then issue conviction warrant accordingly. Aggrieved of the said orders, the JDr filed this CRP.

4. At the hearing, the learned counsel for the JDr, while drawing the attention of this Court to the interim order dated 08.04.2011 whereunder this court had given an opportunity to the JDr to comply with the Award of the Lok Adalat and further directed the release of the JDr on bail immediately, would submit that subsequent thereto there are no instructions from the JDr in regard to the compliance or non compliance of the above said interim order. Be that as it may. The interim order of this court reads as under:

‘Either the petitioner or his family members complying with the Award in OS.no.8 of 1992 dated 15.08.1997 passed by the Kaikalur Taluk Legal Service Authority by leaving 1 ½ feet width on the eastern side boundary of the petitioner’s land throughout the boundary for the purpose of drainage bode and on reporting the said compliance with the said Authority, the petitioner shall be released on bail immediately.’

[Reproduced verbatim]

The learned counsel for the JDr would further submit that the Award was passed on 15.08.1997 and that the present EP is filed on 08.12.2009, that is, beyond the period of limitation allowed under law and that,

therefore, the Court below ought not to have entertained the execution petition which is barred by time and ought not to have ordered the arrest of the JDr and ought not to have passed the conviction orders.

5. In view of the fact that the JDr is not showing any interest in the matter and had failed to give further instructions to his learned counsel before this Court and had also failed to report back to this court as to whether interim orders are complied with or not, in the well considered view of this court, the revision petition deserves to be dismissed for non prosecution. Be it also noted that the Court below while ordering arrest of the JDr had limited the period of confinement to one month; the said one month time had elapsed long time back. Be that as it may.

6. Coming to the aspect of the limitation urged before this Court, what is to be noted is that the DHr had earlier filed EP.no.12 of 1998 and the same was dismissed on 27.10.2000 is borne out by the record. Therefore, the question as to whether the present EP is a continuation of the earlier EP and whether the earlier EP was closed or dismissed for statistical purposes and if so whether the present EP is not barred by time is a question of fact, which the Court of execution has to decide at the appropriate stage, in case such an objection is raised by the JDr by appearing before the Court below, in case the EP is still pending before the Court below. Hence, this Court need not dilate on the said aspect in this CRP.

7. For the aforesaid reasons, the Civil Revision Petition is dismissed, however, giving liberty to the JDr to raise all the contentions, which the law permits, in case the EP is still pending before the Court below. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

16.03.2016

Vjl