

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3189 of 2016

ORDER:

This Civil Revision Petition under Section 115 of Code of Civil Procedure ('CPC' for brevity) is filed by the Revision Petitioner/J.Dr.No.2 challenging the Order dt.11.04.2016 in E.P.No.12 of 2011 in O.S.No.753 of 1999 on the file of First Junior Civil Judge, City Civil Court, Secunderabad, whereby the Executing Court ordered attachment of salary under Order 21 Rule 48 of CPC directing the Drawing and Disbursing Officer to deduct the EP amount and remit the same to the credit of the Execution Petition.

2. It is the case of the Revision Petitioner that on the earlier occasion, an attachment order was issued, the revision petitioner preferred Civil Revision Petition No.787 of 2013 before this Court and this Court directed the Executing Court to afford an opportunity to the revision petitioner, by its Order dt. 08.08.2014, and accordingly, the matter was taken up for hearing. But, none appeared for revision petitioner/J.Dr inspite of specific direction while adjourning the matter to 11.04.2016. Therefore, the Executing Court passed the Order dt.11.04.2016 under challenge.

3. The only contention urged before this Court is that the Executing Court did not comply the direction of this Court in C.R.P.No.787 of 2013 and without hearing the counsel for revision petitioner, passed the Order under challenge.

4. As seen from the Order under challenge, the Executing Court adjourned the petition to 11.04.2016 as a last chance. But, the revision petitioner did not appear before the Executing Court either in person or through his advocate. The only reason explained by the

revision petitioner is that because of on going agitation, the Advocate for Revision Petitioner could not appear before the Executing Court. No doubt, the Advocate was prevented by a cause beyond his control but nothing prevented the Revision Petitioner to appear before the Executing Court. It is also contended that after ordering attachment, earlier, certain amount was deducted from the salary of the revision petitioner and filed the present EP without giving credit of the amount already deducted in the present E.P. This objection can be considered by the Executing Court directing both parties to file calculation memo and decide what is the actual amount due under the Decree. But, it is not a ground to set aside the Order under challenge passed by the trial Court. Hence, both the revision petitioner and the respondent are directed to file calculation memo to ascertain the actual amount due under the decree after deducting the amount earlier credited to EP from the salary of the revision petitioner.

5 . The main contention of the learned counsel for revision petitioner is that no opportunity was given to the petitioner, as ordered by this Court in the revision filed by him. But, as seen from the record, the matter was adjourned to 11.04.2016 as a last chance and the parties are conscious of the date of adjournment, still they did not appear before the Executing Court for different reasons. Granting adjournment is not as a matter of course and it is a matter of discretion of the Court. Time and again the Apex Court reiterated that the Courts shall not grant adjournments on mere asking and one of the Judgment reported in ***M/s Shiv Cotex v. Tirgun Auto Plast Private Limited and others***^[1], wherein the Apex Court described the practice of granting adjournments as cancer, which is spreading in the entire body of judicial institution and directed the officers to be proactive in granting adjournments and held in para No.16 as follows:

“Justifiable cause” means a cause which is not only ‘sufficient cause’ as contemplated in Rule 1 of Order 17 CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc, in the area where any of those persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive”.

In view of the principle laid down by the Apex Court with regard to granting adjournments as a matter of course and gave such instructions where adjournments can be granted and directed the advocates to make alternative arrangements. But, instead of following the principle laid down by the Apex Court, the counsel for revision petitioner insisting this Court to repeat the direction issued by this Court in C.R.P.No.787 of 2013, such request cannot be entertained, in view of principle laid down by Apex Court. Therefore, Executing Court rightly passed the Order under challenge. Hence, I find no reason to interfere with the findings recorded by the trial Court within the limits of Section 115 of CPC since the Court exercising revisional jurisdiction can interfere with the Order of the trial Court only in three circumstances viz., (i) where the Court below failed to exercise the jurisdiction that vested in it; (ii) where the Court below exercises jurisdiction which is not vested on it; and (iii) where the Court below exercises its jurisdiction irregularly. But, the learned counsel for revision petitioner is unable to bring to my notice of any of the three circumstances required under Section 115 of CPC to interfere with the Order. In the instant case, I do not find any such reason calling for interference by this Court. Hence, the revision Petition is liable to be dismissed, being *de void* of merit.

6. Accordingly, this Civil Revision Petition is dismissed and liberty is given to both parties to file calculation memos within one month to ascertain the actual amount due under the decree and on such filing

of Memos by both parties, the Executing Court shall issue fresh direction to the Drawing and Disbursing Officer for recovery of the actual amount due under the decree.

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

M. SATYANARAYANA MURTHY, J

Date: 17-08-2016

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

-

-

C.R.P. No.3189 of 2016

-

Dt. 17-08-2016

eha.

[\[1\]](#) (2011)9 SCC 678