

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.3830 OF 2015

ORDER :

The revision petitioner is the 1st respondent in I.A.No.1148 of 2015 in A.S.No.166 of 2013. The suit for recovery of amount due by the partnership firm represented by the Managing Partner including personal assets of the Managing Partner was maintained by the sole plaintiff in O.S.No.135 of 2004 on the file of Senior Civil Judge, Sattenapalli and after the decree, an application for leave of the executing Court under Order 21 Rule 50(2) and Section 151 CPC to proceed against the properties of one of the partners of the firm, as from the decree against the firm, partners are also personally liable and said leave is since granted, the appeal is maintained by the appellant in A.S.No.166 of 2013 against whose property leave granted under Order 21 Rule 50 CPC since it is a deemed decree from Sub-Rule (3) of Rule 50 of Order 21 CPC. The appeal is A.S.No.166 of 2013 pending on the file of the IV Additional District Judge, Guntur and nearly two years after the appeal I.A.No.1148 of 2015 was filed for granting stay of execution of the decree against the partners against whom permission is accorded under Rule 50 of Order 21 CPC, in E.P.No.27 of 2015, which is pending on the file of I Additional Senior Civil Judge, Guntur and there was a stay granted in I.A.No.1148 of 2015 on 11.08.2015. The stay thus reads: “ Heard. Petition is allowed. Stay is granted until disposal of the appeal, other wise the purpose of filing of this appeal is defeated.”

It is impugning the same, the present revision is maintained on several grounds including the order of the lower Court is

without advertent to the requirements necessary for granting stay as contemplated by Order 41 Rule 5 CPC and there is also delay of nearly two years from the date of filing appeal to the date of filing application for stay pending appeal against the execution petition pending and lower Court should not have been granted stay as such for therefrom.

Learned counsel for the revision petitioner reiterated the same by drawing attention of the Court to Order 41 Rule 5 CPC. Whereas it is the submission of one of the respondents to the revision petition-cum-appellant in A.S.No.166 of 2013 supporting the order of the lower Court granting stay pending appeal on 11.08.2015 in I.A.No.1148 of 2015 that though the order is laconic, it is after consideration of the material from the fact that there was attachment before judgment at the time of filing of the stay granted and that was later made absolute thereby there is a sufficient security over the property attached to recover in the event of success of the decree holder which is subject matter of the appeal in A.S.No.166 of 2013 and thereby there is nothing to interfere with the impugned order of the lower court.

Heard and perused the material on record.

No doubt due diligence and lack of laches in obtaining stay by filing appeal in exercise of the statutory right apart from furnishing of security, in the event of unsuccessful in appeal to satisfy the decree of the trial Court confirmed or modified, as the case may be, are the pre-requisite so far requirement to satisfy the decree in the event of trial Court decree under execution confirmed or modified by appeal without setting aside in toto is secured by attachment of properties made absolute and no further attachment even is required. As can be seen from Order 38 Rule 11(a) CPC read with Order 21 Rule 54 CPC, so far delay and

latches in filing the stay application are concerned, the appeal is maintained within the statutory time of limitation and no doubt there is nearly two years delay in filing the stay petition and which cannot by itself be considered wanton latches by deliberately not seeking stay. When discretion is exercised by the trial Court in granting stay to sit against in revision within the limited scope of the Court, practically there is nothing to interfere with the impugned order, but for to direct the lower Court to give preference in disposal of the appeal. It is needless to say that the stay granted by the lower Court to be made absolute is subject to payment of the costs of the lower Court decree by the appellant within one month from the date of receipt of this revision order by the lower appellate Court and failing which the stay is liable to be vacated by the lower appellate Court.

Accordingly, the revision petition is disposed of. There shall be no order as to costs.

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

Dr.B.SIVA SANKARA RAO,J

02.08.2016

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