HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6102 OF 2010

ORDER:

This Civil Revision Petition came to be filed under Article 227 of the Constitution of India assailing the order dated 22.11.2010 passed by the learned Additional District Judge, Vizianagaram, in E.P. No.118 of 2010 in O.S. No.1 of 2003.

Respondent No. 1 filed O.S. No.1 of 2003 for recovery of Rs.10,55,770/- with subsequent interest @ 24% per annum and costs, which was decreed on 28.11.2008. Thereafter E.P.No.118 of 2010 came to be filed for recovery of 12,11,436/-. Later, the petitioner filed O.S. No.7 of 2006 for eviction and recovery of Rs.46,47,200/- being the amount due with interest @ 24% per annum from the date of suit till the date of realization against respondent No.1 herein. The said suit was decreed on 19.01.2012. Pending the said suit, the petitioner filed C.R.P.No.86 of 2005 questioning the order dated 03.12.2004 seeking direction to respondent No.1 herein to deposit arrears of rent and damages for use and occupation of the premises. By order dated 24.06.2005 this Court allowed the said CRP on the following terms:

> *"(a) The respondent shall deposit into the trial Court a sum of Rs.66,000/- (Rupees sixty six thousand only) on or before fifth of every month, commencing from July, 2005.*
>
> *(b) Out of the amount so deposited, the petitioner shall be entitled to withdraw a sum of Rs.33,000/- (Rupees thirty three thousand only) every month.*
>
> *(c) In case, the respondent finds or feels that a particular sum is required for payment of tax etc. it shall be open to him to file the application in that regard, before the trial Court and the permission for payment of such amounts shall be accorded, after hearing the petitioner. The amount so permitted shall be*

deducted towards the sum of Rs.33,000/- (Rupees thirty three thousand only) to be kept in deposit, and not from the one to be withdrawn by the petitioner, every month."

After the suit was decreed in the year 2012, an appeal was filed by the 1st respondent herein before this Court vide A.S.No.176 of 2012. Initially, stay was granted, but subsequently, interim stay was vacated. The present attachment order is to release Rs.33,000/- deposited pursuant to the order passed by this Court in C.R.P.No.86 of 2005.

Learned counsel for the petitioner mainly submits that the petitioner, who was permitted to withdraw the entire amount cannot be subject to attachment since the order of this Court categorically states that the petitioner herein is entitled to withdraw Rs.33,000/- which was deposited in O.S.No.7 of 2006.

Learned counsel for the respondent would submit that in view of the decree passed in favour of respondents on 28.11.2008 in O.S.No.1 of 2003 and having regard to the fact that the total amount due is Rs.12,11,336/- and as the respondent is entitled to proceed with the attachment for the property as he has to clear all dues and expenditure which incurred at that time, he is entitled to withdraw the entire amount.

As seen from the record, this Court vide order dated 24.06.2005 in C.R.P.No.86 of 2005 directed respondent No.1 herein to deposit Rs.66,000/- in the trial Court from July, 2005. Out of the said amount, so deposited, the petitioner is entitled to withdraw Rs.33,000/-. This Court in CRPMP No.8107 of 2010 passed interim stay on 27.04.2011 permitting the petitioner to withdraw an amount of Rs.33,000/- per month. The said amount was already deposited. In W.P.No.1379 of 2006 filed by M/s Sri Veerabhadra Picture Palace, represented by the 1st respondent herein, questioning the action of the respondents therein in demanding entertainment tax, stay was granted. A Division Bench of this Court in W.V.M.P. No.859 of 2006 filed by the petitioner therein, passed an order on 24.05.2006, which is as follows:

> "*Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned Government Pleader for Commercial Taxes.*
>
> *It is not in dispute that the petitioner herein (respondent No.3 in Writ Petition) is the owner of the theatre and the first respondent (Writ Petitioner was made to deposit a sum of Rs.66,000/- per month towards lease amount. The amount, so deposited, cannot be made subject matter of recovery of arrears of entertainment tax. We make it clear that it shall be the obligation of the Writ Petitioner to clear the arrears of the entertainment tax for the period, for which he has been running the theatre and third respondent, in turn, shall clear the arrears for the balance period.*
>
> *The petitioner-third respondent submits that the amount, which was deposited by the Writ Petitioner, is needed for medical expenses.*
>
> *Accordingly, the order, dated 13.03.2006 is modified leaving it open to the petitioner-third respondent to withdraw the deposited amount in accordance with the orders passed in various civil proceedings. Such arrangement shall be without prejudice to the right of the authorities of the Commercial Tax Department to recover the arrears, in accordance with law, from the respective persons."*

In view of the orders passed by the Division Bench of this Court, the order attaching the entire amount appears to be incorrect. Therefore, the civil revision petition is allowed permitting the petitioner to withdraw an amount @ Rs.33,000/-, which he is entitled to in view of the earlier order. It is needless to mention that EP shall be decided in accordance with law having regard to the orders passed by this Court. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed.

JUSTICE C. PRAVEEN UMAR

Date: 01.04.2016.
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HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

Civil Revision Petition No.6102 of 2010

Dated: 01.04.2016

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