

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.1187 OF 2016

ORDER:

Heard Ms.Y.L.Siva Kalpana Reddy for petitioners and Mr.S.Lakshminarayana Reddy for respondents 2 and 3.

The revision is directed against the order dated 31.12.2015 in E.A.No.12 of 2014 in E.A.No.7 of 2014 in E.P.No.21 of 2010 in O.S.No.34 of 2001 in the Court of the I-Additional District Judge, Nellore. The judgment debtors are the revision petitioners. The revision petitioners in E.A.No.12 of 2015 prayed for restitution of possession of E.P schedule property delivered to respondents 2 and 3 herein pursuant to the order dated 17.07.2014.

This Court, on 11.03.2016 and 16.03.2016, directed the learned Principal District Judge, Nellore to transmit the records in E.P.No.21 of 2010 to this Court for consideration. The Principal District Judge transmitted the report and the record in E.P.No.21 of 2015. Learned counsel appearing for the parties after perusing the record and more particularly having regard to the finding recorded by the I-Additional District Judge, Nellore, which reads as follows,

‘Both parties have raised contentions and issues touching the merits of the case and the grounds of the execution. As already stated by me, the stay orders issued by the Honourable High Court in A.S.M.P.No.428 of 2010 in A.S.No.156 of 2010 are pending and are in force till date. While the stay is in force, this Court feels that this Court cannot pass any orders on merits in the above application while the stay orders are pending disposal of the appeal.’

requested the Court to clarify that the I-Additional District Judge, Nellore may be directed to consider the twin applications viz., E.A.Nos.10 & 12 of 2014 filed by the revision petitioners, without reference to the orders in A.S.M.P.No.428 of 2010 in A.S.No.156 of 2010.

As already noted, the learned I-Additional District Judge, by referring to the order of stay granted by this Court in A.S.M.P.No.428 of 2010, felt that the executing Court cannot pass appropriate orders at this stage of the matter.

The admitted circumstances leading to the filing of revision are that respondents 2 and 3, on 08.03.2010, filed E.P.No.21 of 2010 for executing the decree in O.S.No.34 of 2001. The revision petitioners filed A.S.No.156 of 2010 and on 10.03.2010 in A.S.M.P.No.428 of 2010, interim stay of all further proceedings in O.S.No.34 of 2001 was granted. On 02.07.2010 vide A.S.M.P.No.584 of 2010, the order in A.S.M.P.No.428 of 2010 was modified as follows:

“This petition is filed to vacate the interim stay granted by order dated 10.3.2010 passed in ASMP.No.428 of 2010, which was dismissed by order dated 1.6.2010 and again restored by order dated 21.6.2010.

Learned counsel for the petitioners submits that the conditional order has been complied with by handing over the demand drafts, as recorded by this Court in its order 21.6.2010. It is also asserted by the learned counsel for the petitioners that the rent for suit schedule premises is Rs.7,000/- per month, as the property is situated in main Nellore town.

Learned counsel for the respondents submits that the claim of the petitioners for Rs.2,000/- per month has been negated by the court below, hence, the petitioners are not entitled to the same.

In view of the fact that the suit schedule property is situated in Nellore town, suffice it to direct the respondents to pay the rents at the rate of Rs.2,000/- per month from the month of July, 2010 onwards, for the use and occupation of the premises, payable by the end of every month and continue to pay the same regularly by the end of every month, till disposal of the appeal. The amounts shall be deposited to the credit of the suit and on such deposit, the petitioners are entitled to withdraw the same, without furnishing security”.

Respondents 2 and 3 complaining default in depositing the amount as directed by this Court filed E.A.No.4 of 2014 to proceed with E.P immediately and pass appropriate orders. On 17.07.2014, the executing Court ordered as follows:

“Heard DHr. Notice served on JDr., there is no representation. Hence, this petition allowed and issued delivery warrant over EP schedule property. Hence this EA allowed.”

According to revision petitioners, the delivery ordered by the executing Court is bristled with illegalities and irregularities and as a matter of fact without obtaining report from the office on the actual deposit of amount by the revision petitioners herein, the delivery was ordered. It is an *ex parte* order and that even if the condition is not complied with unless and until appropriate clarification is obtained from this Court, the EP ought not to have been proceeded with and delivery ordered.

Mr.S.Lakshminarayana Reddy, learned counsel appearing for respondents 2 and 3, while forcibly opposing the instant revision, alternatively submitted that the Court below can be directed to consider E.A.Nos.10 and 12 of 2014, by setting aside the finding recorded by the executing Court, afresh on merits.

Having regard to above submissions, this Court remands the matter for comprehensive consideration by the executing Court viz., the prayers in E.A.Nos.10 and 12 of 2014. Though report and records have been called for, findings on merits are not recorded, as the order impugned in the revision is set aside and matter remanded to the Court below.

Accordingly, the order in E.A.No.12 of 2014 is set aside and the matter is remanded to the I-Additional District Judge, Nellore for consideration and disposal along with E.A.No.10 of 2014. As already

noted, the executing Court is directed to consider the alleged illegalities complained from the date of filing E.A.No.4 of 2014 and the stay granted by this Court in A.S.M.P.No.428 of 2010 does not preclude the Court from considering the EAs on merits.

The revision is allowed and E.A.No.12 of 2014 is remanded to the I-Additional District Judge, Nellore for disposal as indicated above, within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

The Registry is directed to forthwith despatch the report and record received from the Court below.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

S.V.BHATT,J

Date: 21.03.2016

Note:

CC in three days

Lrkm