

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.1517 OF 2016

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ORDER:

This Revision, filed under Section 115 of the Civil Procedure Code (herein after, called 'the CPC'), challenges the order dated 26.02.2016 passed by the Court of the Junior Civil Judge, Kalyandurg, Ananthapuramu District, in E.P.No.97 of 2014 in O.S.No.91 of 2014.

2. Heard Sri M.Karibasaiah, learned counsel, appearing for the petitioners and Sri P.Pandu Ranga Rao, learned counsel, appearing for the respondent.

3. The Court below decreed O.S.No.91 of 2014, granting injunction in favour of the respondent. Seeking enforcement of the said decree, respondent herein filed E.P.No.97 of 2014 under the provisions of Order 21 Rule 32 and Section 151 of the CPC. The respondent herein also sought for police aid for implementation of the said decree.

4. Resisting the said execution petition, the petitioners herein filed a counter. The learned Junior Civil Judge, Kalyandurg, by way of an order dated 26.02.2016, granted police aid in favour of the plaintiff/respondent herein for implementation of the injunction orders, while rejecting the relief to send the petitioners to civil prison, as the respondent/plaintiff himself did not press for the said prayer at the time of arguments. The said order passed by the learned Junior Civil Judge is under challenge in the present Revision.

5. According to the learned counsel for the petitioners, the impugned order is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 21 Rule 32 of the CPC. It is the further submission of the learned counsel that the petitioners herein filed an application to set aside the *ex parte* decree and also an

application to condone the delay in filing the same and the Court below condoned the delay also on the day on which the impugned order was passed.

6. On the contrary, it is submitted by the learned counsel for the plaintiff/respondent herein that there is no error nor there is any infirmity in the impugned order. It is the further submission of the learned counsel that so long as the injunction order is in force, the respondent herein cannot be denied the benefit flowing there from. It is also the submission of the learned counsel that their condonation of delay in filing the application under Order 9 Rule 13 of the CPC would not enure to the benefit of the petitioners to frustrate the decree. In support of his submissions and contentions, learned counsel for the respondent placed reliance on the judgment of this Court in **Thammineni Gandhi and others Vs. Mallela Venkateshwarlu and others**^[1].

7. In the above backdrop, now the issue that emerges for consideration of this Court is:

Whether in the facts and circumstances of the case, the order impugned is sustainable and tenable or whether the same warrants any interference of this Court under Section 115 of the CPC?

8. The information available before this Court manifestly discloses that the suit instituted by the respondent herein was decreed on 22.09.2014, granting injunction against the petitioners herein in respect of the schedule property and seeking enforcement of the said decree, the respondent/decreed holder filed E.P.No.97 of 2014 in the month of November 2014. Opposing the said E.P., the petitioners herein filed a counter, stating that they filed application to set aside the *ex parte* decree. Even according to the learned counsel for the petitioners, I.A.No.357 of 2015, seeking condonation of delay of 144

days in filing application under

Order 9 Rule 13 of the CPC application was allowed on 22.06.2016.

9. It is also required to be noted that, for the reasons best known to the petitioners, they did not file any application under Order 21 Rule 26 of the CPC seeking stay of the decree. In fact, a perusal of the order passed by the Court below, which is under challenge, in the present Revision, clearly and categorically shows that the learned Judge recorded the reasons for granting police aid. There is absolutely no dispute with regard to the fact that, as on today, the injunction granted against the petitioners is still in operation. Therefore, this Court is not inclined to meddle with the order passed by the Court below.

10. For the aforesaid reasons, Revision Petition is dismissed, however, the Court below is directed to dispose of the I.A. filed by the petitioners under Order 9 Rule 13 of the CPC without being influenced by any observations made either in the present order or in the impugned order, within a period of four weeks from the date of receipt of a copy of this order.

12. Miscellaneous petitions pending consideration, if any, in the Revision Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

08.07.2016

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[\[1\]](#) 2015 (1) ALD 71