

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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Civil Revision Petition Nos.2416, 2582 & 2789 of 2016

COMMON ORDER:

These three civil revision petitions are filed by the unfortunate judgment-debtor/tenant, the decree for possession against whom has been executed on a fast-track, like flash floods.

2. Heard Sri Narasimha Rao Gudiseva, learned counsel for the petitioner and Sri K.Sai Mohan Rao, learned counsel for the respondent.

3. The respondent herein filed a suit in OS No.782 of 2015 for recovery of possession of a property that was let out to the petitioner herein. By a judgment and decree dated 17.02.2016, the trial court directed the petitioner herein to vacate and handover possession of the suit property within two months from the date of judgment.

4. There was a delay of 14 days in the petitioner filing a regular appeal before the District Court. Taking advantage of the same, the respondent initiated execution proceedings in EP No.68 of 2016.

5. Since, the E.P. was filed within two years, the executing court, even on the first occasion, namely, on 20.04.2016 directed the issue of delivery warrant returnable by 07.06.2016. It was followed by two orders, one for break-open of the lock and another for police protection, in EA Nos.162 and 163 of 2016. Therefore, as against all the three orders, namely (a) order dated 20.04.2016, directing the issue of delivery warrant, (b) orders dated 28.04.2016 permitting break-open and (c) directing police protection, the JD'r has come up with the present three revision petitions.

6. At the outset, there are certain things which are so glaring that the orders passed by the executing court cannot receive approval

from this court. As I have pointed out earlier, the suit was decreed on 17.02.2016. The operative portion of the judgment, which automatically becomes the decree, directs the petitioner herein to deliver vacant possession within two months from the date of judgment. The expression 'date of judgment' should be construed to mean the date of making available, the certified copies of the judgment and decree. The copy of the judgment and decree were made available, as per the court endorsements, on 21.03.2016. Therefore, the petitioner is obliged to handover possession, even as per the decree, on or before 20.05.2016. But the executing court directed the issue of delivery warrant one month in advance i.e. on 20.04.2016. Within eight days of such an order directing delivery, the court also permitted break open and police protection on 28.04.2016, all before the expiry of the time granted by the trial court. Therefore, the entire exercise undertaken by the executing court smacks of all *bona-fides*. Admittedly, the delay of 14 days on the part of the petitioner in filing a regular appeal against the decree for possession has been condoned and the appeal has been numbered. But unfortunately, the matters appear to have become complicated, by the first Appellate court dismissing the stay petition due to the action of the executing court.

7. Therefore, it is so obvious that nothing has happened in accordance with law before the executing court and all the three orders are liable to be set aside. Accordingly, all the three civil revision petitions are allowed and the orders impugned are set aside.

8. Once the order for issue of delivery warrant and the consequential orders are set aside, the next question that would arise for consideration is as to what relief the petitioner would be entitled to, as a consequence of such orders. The answer is to be found in Section 144 of the Code. It is possible for this court to direct the first appellate court to take up and decide the application under Section 144 of the Code. But that will only multiply the proceedings. Therefore,

while allowing the civil revision petitions, a direction is issued to the executing court to adopt the same route and restore possession of the property to the petitioner within fifteen (15) days. A report of compliance shall be filed before this court. There will be no order as to costs. Miscellaneous petitions pending if any in these revisions, shall stand closed.

V.RAMASUBRAMANIAN, J

Date: 12.08.2016
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

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