

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.3670 OF 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff under Section 115 of the Code of Civil Procedure, 1908, challenging the order dated 27.04.2016 passed in Execution Petition No.26 of 2015 in Original Suit No.374 of 2013 by the Additional Senior Civil Judge, Tirupati, Chittoor District.

2. The case of the petitioner is that he filed the above mentioned suit for recovery of money basing on the promissory note dated 20.02.2012, which was executed by the respondent in favour of the petitioner for a sum of Rs.5,00,000/-. The said suit was decreed *ex parte* on 04.04.2014 for a sum of Rs.6,62,333/- with interest at the rate of 6% per annum from the date of suit till the date of realisation. As the respondent failed to pay the amount, the petitioner filed E.P.No.26 of 2015 for execution of the decree. The said petition came to be dismissed on the ground that an application vide I.A.No.619 of 2014 to set aside the *ex parte* decree was pending and the petitioner/D.Hr has obtained attachment order of retirement benefits of the respondent/J.Dr. Challenging the same, the present revision is filed.

3. Learned counsel for the petitioner mainly submits that the finding given by the Court below is erroneous and as such, the same wants interference. The same is not seriously disputed by the learned

counsel for the respondent, but, however, submits that the matter may be remanded back for fresh consideration.

4. As seen from the record, *ex parte* decree came to be passed on 04.04.2014. Thereafter, I.A.No.619 of 2014 came to be filed to set aside the *ex parte* decree. The said application was posted to 29.02.2016 for depositing suit costs. Since the amount was not deposited, the said Interlocutory Application was dismissed. These facts are not disputed by the learned counsel for the respondent. In view of the above, the finding given by the Court below that no orders can be passed in the execution petition in view of the pendency of the interlocutory application cannot be accepted. Hence, the order under challenge is liable to be set aside.

5. Accordingly, the Civil Revision Petition is allowed setting aside the Order, dated 27.04.2016, passed in E.P.No.26 of 2015 in O.S.No.374 of 2013 by the learned Additional Senior Civil Judge, Tirupati, and the matter is remanded to the Court below to consider the same afresh and pass appropriate orders, in accordance with law.

Consequently, Miscellaneous Petitions, if any, pending in this revision shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:02.11.2016
INL