

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5838 of 2015

ORDER:

This civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for short) by the Judgment Debtor is directed against the orders dated 02.12.2015 of the learned V Additional District Judge, Nellore passed in EP.no.15 of 2015 in OS.no.136 of 2009.

2. I have heard the submissions of the learned counsel for the revision petitioner/Judgment Debtor ('the JDr', for short) and the learned counsel for the respondent/Decree Holder ('the DHr', for short). I have perused the material record.

3. The facts, which are relevant for consideration, in brief, are as follows:

The DHr having obtained an *ex parte* decree for recovery of money had applied for execution for the recovery of the decree debt by seeking the arrest and detention of the JDr in a civil prison. Even in that EP, the JDr had remained *ex parte*. The Court of execution, by the order impugned, had ordered arrest of the JDr and directed issuance of an arrest warrant against him on the payment of process by the DHr. Aggrieved of the said orders, the present revision petition is filed by the JDr.

4. At the hearing, the learned counsel for the JDr would fairly submit that an application under Order IX Rule 13 of the Code has been already filed on the original side for setting aside the *ex parte* decree and that the said petition stands posted to 06.04.2016. In view of the fact that the order in the EP, which is impugned is an *ex parte* order and the decree, which is under execution, is also an *ex parte* decree, a request is made by the learned counsel for the JDr to direct the JDr to deposit 1/4th of the EP amount with interest and costs to the credit of the EP pending before the Court below and direct the Court below to dispose of the application filed under Order IX Rule

13 of the Code i.e., IA.No.175 of 2014 as expeditiously as possible and further direct the Court below to proceed with the execution, if necessary, depending upon the final result in the said interlocutory application.

5. The learned counsel for the DHr while endorsing the said view would submit that if the Court below is directed to expeditiously dispose of IA.No.175 of 2014, the ends of justice would be met.

6. Recording the aforesaid submissions, the Civil Revision Petition is allowed directing the recall of the warrant of arrest against the JDr subject to the condition that he shall deposit, to the credit of the EP before the Court of execution, 1/4th of the entire decretal debt including interest besides costs on or before 06.04.2016. On such deposit, the further proceedings in the EP shall stand stayed until the disposal of IA.No.175 of 2014 by the Court below. It is made clear that the Court below shall dispose of IA.No.175 of 2014 filed under Order IX Rule 13 of the Code as expeditiously as possible and preferably within a period of one (01) month from today, if necessary, by advancing the said application from 06.04.2016 to a nearer date convenient to the Court and the counsel for the parties. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

Date:22.02.2016

Note: Issue CC by 26.02.2015

(B/o)

Vjl