

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO. 4803 OF 2010

O R D E R:

This Revision is filed challenging the order in E.P.No. 476 of 2006 in O.S.No. 107 of 2000 on the file of First Additional Junior Civil Judge, Nellore dated 10.2.2009 whereby the trial Court dismissed the E.P. on the ground that the petitioner failed to prove disobedience of decree for mandatory injunction by judgment debtors passed in favour of plaintiff and thereby framing the point “whether the judgment debtor No. 1 can be arrested for violation of terms of decree under Order 21 Rule 32(5) CPC” and concluded that the decree holder failed to prove disobedience of the decree to order arrest of judgment debtor for implementation of decree for mandatory injunction.

Undisputedly, the decree was passed in favour of the revision petitioner/decreed holder granting mandatory injunction for removal of shutter S-1 fixed to eastern wall B, B-1 and constructing a wall in its place and filed EP seeking relief under Order 21 Rule 32 (5) CPC, which says that “where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done as far as practicable by the decree-holder or some other person appointed by the Court, at the

cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree”.

Here the decree was passed in favour of the plaintiff directing the defendant to remove the shutter S-1 fixed with eastern wall B, B-1 wall within one month from the date of decree. But the judgment debtor did not comply the direction as such non-compliance amounts to disobedience of direction issued by the Court in decree for mandatory injunction, in such a case, the Court may in lieu or in addition to the procedure prescribed under Order 21 Rule 32 (1) to (4) of CPC through process of the Court by appointing the amin or any other competent person of the Court to implement the order at expenses of the judgment debtor. But instead of considering the relief claimed in the EP under Order 21 Rule 32(5) of CPC, the trial Court resorted to decide the necessity of ordering arrest of judgment debtor by implementing the decree as required under Order 21 rule 32(5) of CPC, which is not prayed for by the petitioner. The Court instead of giving a direction contained under sub-rules (1) to (4) of Order 21 Rule 32 or in lieu of or in addition to relief's available in the above Rule, the Court may direct the implementation of decree for mandatory injunction. But the trial Court on wrong appreciation of facts ignored the relief claimed in the EP and passed the impugned order holding that the petitioner did not make out a case of disobedience to order arrest of the judgment debtor in terms of Rule

32 (1) of Order 21 CPC, therefore, the order under challenge is erroneous on the face of the record. Hence, in view of disobedience of decree the order passed by the executing Court is hereby set aside directing the trial Court to issue necessary warrant for execution of decree for mandatory injunction passed in O.S.No. 107 of 2000 which is the subject matter of E.P.No. 476 of 2006 subject to compliance of other formalities like payment of process etc., and take steps for implementation of decree passed by the trial Court as prayed for in the EP.

With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 17.09.2016
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