

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.5594 of 2016

ORDER:

This Revision is filed by the petitioner challenging the order dt.02-09-2016 passed by the Senior Civil Judge, Tadepalligudem in E.A.No.81 of 2015 in E.P.No.77 of 2013 in O.S.No.251 of 2011.

2. Admittedly, the respondent had filed O.S.No.251 of 2011 on the file of the Senior Civil Judge, Bapatla for recovery of money against petitioner and it was decreed *ex parte* on 17-10-2012.

3. On 27-12-2012, the Decree Holder filed an application to transmit the decree to the Court of Senior Civil Judge, Tadepalligudem. Thereafter he filed E.P.No.77 of 2013 on 17-06-2013. Notice was served on petitioner and the petitioner appeared and sought time.

4. It is not in dispute that the petitioner has filed I.A.No.548 of 2014 in O.S.No.251 of 2011 on the file of Senior Civil Judge, Bapatla for condonation of delay in seeking to set aside the *ex parte* decree and also an application to aside the *ex parte* decree and the said applications are pending.

5. Since in the E.P. filed by respondent he sought for arrest of petitioner, to stay the proceedings in E.P, the petitioner filed E.A.No.81 of 2015 invoking Order XXI Rule 29 C.P.C.

6. Order XXI Rule 29 C.P.C. reads:

“Order XXI : Execution of Decrees and Orders

...

29. Stay of execution pending suit between decree-holder and judgment-debtor. *Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court,] on the part of the person against whom the decree was passed, the Court may, on such terms to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:*

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.

7. Since in the present case, there is no pending suit, and admittedly, the suit had already been decreed, the said provision of law has no application and the application E.A.No.81 of 2015 is not maintainable. Therefore I am not inclined to interfere with the order passed by the Senior Civil Judge, Tadepalligudem dismissing it.

8. The Civil Revision Petition is dismissed. No costs.

9. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-11-2016

Vsv/*