

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2120 of 2014

ORDER:

The unsuccessful petitioner-2nd JDr preferred this civil revision petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for short) having been aggrieved of the order dated 07.07.2014 of the learned II Additional Chief Judge, City Civil Court, Hyderabad, passed in EA.no.44 of 2014 in EP.no.15 of 2013 filed under Order XXI Rule 105 read with Order XVIII rule 17 and Section 151 of the Code requesting to recall PW1 for the purpose of cross-examination on behalf of the 2nd JDr after setting aside the order dated 06.06.2014 forfeiting the right of the 2nd JDr to cross-examine PW1.

2. I have heard Sri N. Pramod, learned counsel for the revision petitioner-2nd JDr ('the 2nd JDr', for short) and Sri P. Durga Prasad, learned counsel for the 1st respondent-DHr. Respondents 2 to 7 are stated to be not necessary parties. I have perused the material record.

3. The facts which are necessary to be stated as a preface to the order, in brief, are as follows:

The DHr having obtained a decree for recovery of money filed the Execution Petition against the Judgment Debtors, including the 2nd JDr, for realisation of the decree debt of a sum of more than Rs.10.00 lakhs with subsequent interest and execution costs. The 2nd JDr having entered appearance filed a counter raising various defence. When the enquiry was in progress and the matter is coming for cross-examination of PW1, for the absence of the 2nd JDr and his failure to cross-examine PW1, the 2nd JDr's right to cross-examine PW1 was once forfeited on 05.03.2014. Later at his request a further opportunity was given to cross-examine PW1, but, for his failure to again cross-examine PW1, the 2nd JDr's right to cross-examine was forfeited

once again on 06.06.2014. After PW1 was not cross-examined by the 2nd JDr, the DHr reported no further evidence and therefore the matter was posted to 25.06.2014 for evidence of the 2nd JDr. On that day also the 2nd JDr did not appear before the executing Court and his counsel filed an application to recall PW1. The trial Court, having noted the chronology of events and the conduct of the 2nd JDr, dismissed the said petition; having waited till 04:00 PM on that day, 25.06.2014. Aggrieved thereof, the present revision is filed.

4. The learned counsel for the 2nd JDr while reiterating the chronology of events, which are not in dispute, would submit that in April, 2014, the 2nd JDr as per a suggestion that has fallen from the Presiding Officer of the executing Court made efforts to compromise the matter and pay the decree debt to the extent of his liability and that in that direction a demand draft for Rs.1.00 Lakh was already delivered in April, 2014 to the DHr and that in that view of the matter he was under the impression that the matter was simply adjourned to 06.06.2014 and therefore, he did not attend the Court on that day and that when the matter is called on 25.06.2014 he was surprised to know that his right to cross-examine PW1 was forfeited and that on that day also he did not attend the Court under the *bona fide* impression that the matter is simply adjourned to that date and that therefore he also did not note the steps of forfeiting his right to cross-examine PW1. The learned counsel would also submit that if on some terms the order impugned is set aside and an opportunity is given to the 2nd JDr to cross-examine PW1 on a date fixed by this Court, the 2nd JDr is prepared to proceed with the cross-examination of PW1 without fail and that if such an opportunity is given, the ends of justice would be sub-served.

5. Per contra, the learned counsel for the DHr, having brought to the notice of the Court the contents of the order impugned in this revision and also the fact that the Execution Petition is of the year 2013, submitted that by now with subsequent interest and costs the amount due is more than Rs.12.00 Lakhs and

that till date a paltry amount of Rs.1.00 Lakh only is paid and that the 2nd JDr is not even attending before the executing Court and is dragging on the matter and that the present revision is also an attempt in that direction.

6. I have bestowed my attention and given earnest consideration to the facts and submissions.

7. Admittedly, the Execution Petition is filed for the arrest of the 2nd JDr and others as stated in the Execution Petition. Therefore, the executing Court is required to examine the aspects like the wilful negligence on the part of the 2nd JDr in not paying the decree debt and also his means to pay the entire decree debt or a substantial part thereof. Therefore, and in view of the fact that a fair offer is made that if some terms are imposed, the 2nd JDr is prepared to comply with the terms and cross-examine PW1, if recalled, on a date fixed by this Court, this Court is of the considered view that one more final opportunity can be given to the 2nd JDr.

8. On the above analysis, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, EA.no.44 of 2014 in EP.no.15 of 2013 is allowed and the order dated 06.06.2014 of the executing Court forfeiting the right of the 2nd JDr to cross-examine PW1 is recalled for the purpose of cross-examination of PW1 on behalf of the 2nd JDr, subject to the condition that the 2nd JDr shall deposit before the executing Court, within one month from the date of receipt of a copy of this order, a sum of Rs.2.00 Lakhs towards part satisfaction of the decree debt; on failure to do so, the subject EA shall stand dismissed and the order of the executing Court, which is impugned in this revision, shall stand revived. The DHr is permitted to withdraw the amount, if any, deposited by the 2nd JDr pursuant to this order by following the procedure established by law. It is needless to state that on the 2nd JDr depositing the aforesaid amount of Rs.2.00 Lakhs, as directed in this order, the executing Court shall fix a nearest/short date for appearance of PW1 for cross-

examination on behalf of the 2nd JDr and then give an opportunity to the 2nd JDr to adduce evidence, if any, on his side and then dispose of the Execution Petition on merits and in strict accordance with the procedure established by law. In case of compliance of the afore-stated direction in this order by the 2nd JDr, the executing Court shall make an endeavour to dispose of the Execution Petition as expeditiously as possible and preferably within a period of three (03) months from today.

Miscellaneous petitions, if any, pending in this revision shall stand closed. No order as to costs.

15th November, 2016
Vjl

M. SEETHARAMA MURTI, J

