

-
-
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI
-
-

-
CIVIL REVISION PETITION No.5170 OF 2015
-

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for short), by the petitioner/defendant is directed against the orders dated 15.10.2015 of the learned XII Additional District Judge, East Godavari at Pithapuram passed in I.A.No.191 of 2015 in A.S.No.25 of 2015 filed by the defendant under Order XLI Rule 5 read with Section 151 of the Code for grant of stay of the operation of decree dated 09.02.2015 in O.S.No.101 of 2012 on the file of learned Senior Civil Judge, Pithapuram.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant and the learned counsel for the respondent/plaintiff. I have perused the material record.

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

The plaintiff's suit for recovery of money, which was resisted by the defendant, was decreed by the trial Court, on merits, after full-fledged trial. The unsuccessful defendant having preferred the afore-mentioned first Appeal Suit on the file of learned XII Additional District Judge, East Godavari at Pithapuram had sought for stay of the operation of the decree of the trial Court; interim stay was granted on the condition of the defendant depositing the costs as taxed in the decree of the trial Court. The defendant, having deposited the said costs to the credit of the suit before the trial Court, had filed a memo dated 03.06.2015 before the Court below. After the respondent/plaintiff had entered appearance and filed the counter in the application for grant of stay, the trial Court having heard the learned counsel for both sides passed the impugned order. However, while granting stay and

making the stay order absolute, the Court below had directed the defendant to deposit half of the decree amount into the trial Court on or before 30.10.2015. Aggrieved of the said condition imposed in the said order by the Court below, the defendant is before this Court.

4. The learned counsel for the defendant would submit that the first appeal Suit is a continuation of the original suit; and that pending adjudication of the grounds urged in the appeal suit, the Court below ought not to have directed the defendant to deposit half of the decree debt to the credit of the suit; and that such a condition imposed is a onerous condition; and that the immovable property of the defendant is already attached during the pendency of the suit; and that the said order of attachment is made absolute; and that, therefore, there is already sufficient security for the suit debt/decreed debt; and that the defendant is a Teacher; and that, therefore, the order impugned in the revision warrants interference. He would alternatively submit that the defendant is prepared to pay or deposit 1/4th of the decree debt, which works out about Rs.2,00,000/- according to his calculation.

5. The learned counsel for the plaintiff, on the other hand, would submit that the suit is of the year 2012; and that the plaintiff is a lady; and that she having lent the money, when the defendant is in need of money, is being made to go around the Courts; and that despite the decree granted, she is not able to realize any amount from the defendant; and that the defendant has no fair chance of success in the Appeal Suit; and that as per the settled law, the Court below had granted conditional stay, as it is not permissible under law to grant blanket stay in a first appeal suit filed against a money decree; and that as per usual practice and procedure, the said reasonable condition was imposed by the Court below; and that the conditional order of stay does not warrant interference.

6. I have noted the submissions and perused the material record. The short question is as to whether the condition that was imposed directing the defendant to deposit half of the decree amount, while granting stay of the operation of the decree of the trial Court pending final disposal of the first

Appeal Suit is not reasonable, just and fair in the facts and circumstances of the case.

7. A perusal of the decree would show that the decree was granted for Rs.4,19,600/- with interest at 12% per annum on the principal amount of Rs.2,50,000/- from the date of suit till the date of decree and thereafter @ 6% per annum from the date of decree till the date of realization. A perusal of the material record would show that a number of grounds, including a ground, that the request of the defendant to send the suit promissory note to an expert was erroneously rejected by the trial Court, are raised in the memorandum of grounds of appeal. Be that as it may. The principal amount is Rs.2,50,000/-. The suit amount with interest, as on the date of the hearing, as per the submissions of the learned counsel works out to about Rs.6,00,000/-. The costs of the suit are already deposited. It is also submitted at the hearing that if a direction is given to the Court below to dispose of the first Appeal Suit expeditiously, the ends of justice would be met. Be that as it may.

8. Having regard to the facts, the circumstances and the submissions, this Court is of the considered view that this Civil Revision Petition can be disposed of by modifying the condition imposed by the Court below in regard to the deposit of half of the decree amount.

9. In the result, the Civil Revision Petition is allowed in part modifying the condition imposed in the impugned order of the Court below and directing the defendant to deposit Rs.2,00,000/- to the credit of the suit O.S.No.101 of 2012 on the file of learned Senior Civil Judge, Pithapuram, on or before 15.06.2016. It is needless to state that on failure of making such deposit by the defendant as directed, the stay order shall stand vacated and the plaintiff would be at liberty to execute the decree. In case the plaintiff files an application for withdrawal of the suit costs deposited by the defendant, the Court concerned shall entertain the same and permit the plaintiff to withdraw the suit costs, as the request in that regard is not resisted by the defendant. Further, the plaintiff is also at liberty to withdraw the above said amount

Rs.2,00,000/- on furnishing immovable property security or such security to the satisfaction of the Court below.

The Court below is directed to dispose of the first appeal suit, on merits and as per procedure, as expeditiously as possible, and preferably within a period of three months from the date of the receipt of a copy of this order. No costs.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

M.SEETHARAMA MURTI, J

Date: 25.04.2016

Note:- Issue CC by 05.2016
(B/o)
pab