

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CIVIL REVISION PETITION No. 4378 of 2016

ORDER:

Aggrieved by the order dated 19.08.2016 in E.A.No.29 of 2016 in E.P.No.2 of 2016 in O.S.No.74 of 2012 on the file of Junior Civil Judge, Lakkireddipalli whereby the said executing Court stayed the execution proceedings pending before it till disposal of I.A.No.294 of 2015 in A.S.No.5 of 2015 on the file of Additional District Judge, Rayachoty.

2) Petitioner herein filed O.S.No.74 of 2012 against respondents herein on the file of Junior Civil Judge, Lakkireddipalli for perpetual injunction and obtained decree. Aggrieved, the respondents preferred A.S.No.5 of 2015 on the file of Additional District Judge, Rayachoty and filed I.A.No.294 of 2015 for stay of decree and judgment in O.S.No.74 of 2012 and when the said petition was pending, petitioner herein proceeded with execution in E.P.No.2 of 2016. Hence respondents filed E.A.No.29 of 2016 under Order XXI Rule 29 CPC before the executing Court and sought for stay of execution till disposal of I.A.No.294 of 2005 in A.S.No.5 of 2015 on the file of Additional District Judge, Rayachoty. Petitioner opposed the said petition. However, the executing Court has granted stay of execution till disposal of the appeal.

Hence the CRP.

3) Heard arguments of Sri M.Srikanth, learned counsel for petitioner and learned Government Pleader for Arbitration for respondents and with their consent the CRP is disposed of at the admission stage.

4) The main plank of argument of learned counsel for petitioner is that the executing Court has grossly erred in granting stay of execution and such stay ought to be obtained by the respondents from the appellate Court and in fact stay application is pending before the appellate Court. He further argued that the executing Court cannot draw power under Order XXI Rule 29 CPC because such a power can be exercised only when the EP filed by the decree-holder against the judgment-debtor and the suit filed by the judgment-debtor against the decree-holder are both pending before it which is not the case here. He thus prayed to set aside the impugned order by allowing the CRP.

5) Per contra, learned counsel for respondents supported the order under challenge.

6) The point for determination is:

“Where there are merits in this CRP to allow?”

7) **POINT:** I find considerable force in the submission of learned counsel for revision petitioner. The petition was filed by the respondents herein under Order XXI Rule 29 which reads thus:

“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 as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.”

So, a bare perusal of above provision would indicate that the executing Court can exercise power under Order XXI Rule 29 CPC to stay the execution before it when:

- (i) an execution petition arising out of the decree passed by it or transferred to it for execution is pending before it and
- (ii) a suit filed by the judgment-debtor against the decree-holder is also pending before it.

Thus, both the proceedings should be simultaneously pending before the same Court to confer power on that Court under Order XXI Rule 29 CPC to stay the execution. My view gets fortification from the judgment in *Shaukat Hussain @ Ali Akram vs. Bhuneshwari Devi (dead) by LRs.*¹ wherein the Apex Court held thus:

“Para-7 It is obvious from a mere perusal of rule (Order XXI Rule 29) that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it.”

¹ AIR 1973 SC 528

8) However, in the instant case, such is not the situation. Admittedly, the appeal is pending before the Additional District Judge, Rayachoty and EP alone is pending before the executing Court. In such circumstances, the executing Court cannot draw power under Order XXI Rule 29 CPC to stay the execution proceedings pending before it. Hence, the CRP merits consideration. However, since the appeal is pending before Additional District Judge, Rayachoty wherein the stay application is also pending for adjudication, the respondents herein shall be given a reasonable time to seek for an order on merits in the appeal.

9) Accordingly, while setting aside the impugned order in E.A.No.29 of 2016 in E.P.No.2 of 2016 in O.S.No.74 of 2012 on the file of Junior Civil Judge, Lakkireddipalli by allowing the CRP, all further proceedings pursuant to the decree and judgment in O.S.No.74 of 2012 are stayed for a period of three (3) months from the date of this order to enable the respondents herein to approach the Additional District Judge, Rayachoty seeking stay in A.S.No.5 of 2015.

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

JUSTICE U. DURGA PRASAD RAO

Dt. 07.12.2016
Murthy