

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

APPEAL SUIT No. 522 of 2015

JUDGMENT: (*Per VRS,J*)

This appeal arises out of the dismissal of a claim petition filed by a third party to a decree under Order XXI Rule 58 of CPC seeking to raise an order of attachment of movable properties.

2. Heard Mr. T. Lakshminarayana, learned counsel for the appellant, Mr. K. Venkatesh, learned counsel appearing for the 1st respondent/decree holder, and Mr. K. Raja Reddy, learned counsel appearing for the respondents 2 to 5, who are the judgment debtors.

3. The 1st respondent herein filed a suit in O.S.No.131 of 2010 against the respondents 2 to 5 herein for recovery of money. The suit was decreed and the decree has attained finality. Therefore, the 1st respondent laid execution in E.P.No.245 of 2010. In the execution petition, certain movables were ordered to be attached by the executing Court. Upon coming to know of the attachment of the movables, the appellant, who claimed to have purchased the immovable properties as well as the movable properties, which were actually put to use for running a hotel, came up with an application in E.A.No.316 of 2011 under Order XXI Rule 58 of CPC, seeking to

raise the order of attachment, on the ground that the properties attached had already been purchased by them. The said claim petition was dismissed by the executing Court, by an order, dated 04.07.2015. Therefore, the third party, whose claim petition was dismissed by the executing Court, has come up with the above regular appeal.

4. During the pendency of the above appeal, the appellant/third party seems to have entered into a settlement with the 1st respondent/decree holder. Pursuant to the said settlement, the appellant has taken two demand drafts, bearing Nos.674657 and 674658, respectively for the amounts of Rs.9.00 lakhs and Rs.6.00 lakhs, drawn on Bank of India, in the name of the 1st respondent. The 1st respondent is present in Court. She is prepared to receive the demand drafts in full and final satisfaction of her claim in the decree in O.S.No.131 of 2010 and the claim in the execution petition, E.P.No.245 of 2010.

5. The appellant and the 1st respondent have also entered into a Memorandum of Compromise. But, since the judgment debtors also raised a dispute, we are not recording the compromise here. However, insofar as the appeal is concerned, the moment the execution petition is terminated recording full satisfaction, there is no necessity for any adjudication upon the claim petition.

6. Therefore, the demands drafts are handed over to the 1st respondent/decree holder, who is present in Court, Consequently, the Appeal Suit is disposed of, to the following effect:

- 1) E.P.No.245 of 2010 shall stand terminated, on the ground that full and final satisfaction has been reached.
- 2) The decree debt in O.S.No.131 of 2010 stands discharged.
- 3) As a consequence, the order of attachment passed in E.P.No.245 of 2010 shall stand raised.
- 4) As a consequence of the appellant discharging the decree debt of the respondents 2 to 5, the bank guarantee furnished by the appellant pursuant to the interim orders passed by this Court, is also discharged and the appellant is permitted to take back the money.
- 5) There shall be no order as to costs.

As a sequel, miscellaneous petitions if any pending in the appeal shall stand dismissed.

V. RAMASUBRAMANIAN, J

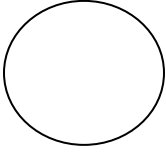
ANIS, J.

8th September, 2016

Note: Furnish C.C. by 09.09.2016.

(b/o)

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