

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2792 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the Revision Petitioner/Decree Holder to modify the Docket Order dt. 24.04.2015 in E.P.No.54 of 2015 in Dispute No.175 of 2014 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad, whereby the Executing Court ordered issue of Notice and Warrant under Order 21 Rule 48 of Code of Civil Procedure (for short 'CPC') on payment of process against J.Dr Nos. 2 and 6 for an amount of Rs.22,693/- each towards their share in the Decretal amount.

2. The main ground urged by the learned counsel for revision petitioner before this Court is that the revision petitioner obtained an Award against all the opposite parties i.e., Judgment Debtors Nos. 1 to 7 and that the Award is clear that J.Dr Nos. 1 to 7 are jointly and severally liable to discharge the decree debt of Rs.1,22,337/- together with interest at 18% p.a., on the principle amount of Rs.1,87,500/- from the date of dispute to till 29.03.2014 and Rs.87,500/- from 30.03.2014 to till the date of realization together with costs of Rs.10,509/-. But, the Executing Court erroneously divided the decree into seven shares and issued Notice and Warrant under Order 21 Rule 48 of CPC to the J.Dr Nos. 2 and 6 only, for an amount of Rs.22,693/- and this Order is totally erroneous.

3. Though Notice is served on respondents, none appeared on behalf of respondents.

4. Undisputedly, as per the Decree, all the J.Drs are jointly and severally liable to pay the decretal amount and the liability of all the J.Drs is joint and several, the Decree Holder can proceed against all the J.Drs or any one of them, to recover the decree debt. Execution Petition is filed against J.Dr Nos. 2 and 6 only for recovery of entire decretal amount of Rs.1,50,848/-. In such a case, the Executing Court shall not attribute the liability proportionately dividing the decree into seven parts. But, the Executing Court exceeded its power and divided the decretal amount into seven equal shares attributing liability to J.Dr.Nos. 2 and 6 at Rs.22,693/- each and such act amounts to modifying the decree and against the principle that Executing Court cannot go beyond the decree. Thus, the Order of the Executing Court is erroneous on the face of the record. In those circumstances, the Executing Court is directed to issue Notice and Warrant for recovery of amount claimed in EP as requested by the Decree Holder for realization of the decretal debt.

5. In the result, this Civil Revision Petition is allowed directing the Executing Court to issue Notice to J.Dr Nos. 2 and 6 and Warrant under Order 21 Rule 48 of CPC for attachment of the salary directing the Drawing and Disbursing Officer of the J.Drs to retain the EP amount together with costs on monthly installments out of the salary subject to Section 60 of CPC and remit the amount every month to the credit of the EP, till discharge of the decretal debt, or, for a period of two years, whichever is earlier.

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

M. SATYANARAYANA MURTHY, J

Date: 10-08-2016

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