

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.32 OF 2016

ORDER:

The order under revision was passed by the IV Additional District Judge, Visakhapatnam in E.A. No.27 of 2015 in E.P. No.18 of 2015 in O.S. No.530 of 2013 dated 04.12.2015.

O.S. No.530 of 2013 was filed by the petitioner herein for declaration of their title over the suit schedule property. After the petitioner herein had effected substituted service, by way of publication in local news papers, an *ex parte* decree was passed on 06.02.2015. The petitioner herein filed E.P. No.18 of 2015 for delivery of the suit schedule property. It is at this stage that the respondent herein filed E.A. No.27 of 2015, under Order 21 Rule 26 CPC, to grant stay of execution of E.P. No.18 of 2015.

In the order under revision, the Court below held that, if the property was delivered to the decree holder, there would be multiplicity of proceedings as Suits were pending between the parties; the decree holder had committed misdeeds in obtaining an *ex parte* decree from the Court, even though he had knowledge of other proceedings in different Courts; even if the judgment-debtor was not available, the Counsel for the judgment-debtor was available in other cases; the judgment debtor had filed an application, under Order 9 Rule 13 CPC, to set aside the *ex parte* decree in O.S. No.530 of 2013 and, if the property was delivered, the very purpose of filing such an application would be defeated. The Court below rejected the contention of the petitioner herein.

After referring to the judgment of the Supreme Court, wherein it was held that Order 21 Rule 26 CPC had no application in cases where the decree was being executed by the same Court which passed the decree, the Court below observed that the said judgment

was distinguishable as it was a money decree, and not a suit for delivery of immovable property. Order 21 Rule 26 of the Civil Procedure Code reads as thus:-

When Court may stay execution:- (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto. (2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application. (3) **Power to require security from, or impose conditions upon, judgment-debtor:-** Before making an order to stay execution or for the restitution of property, or the discharge of the judgment-debtor, the Court shall require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit. "

From a reading of Order XXI Rule 26 CPC, it is evident that it is only the Court, to which a decree has been sent for execution, which shall, upon sufficient cause being shown, stay the execution of such a decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any appellate Court, for an order to stay execution of the decree. In **Malladi Ravishankar v.**

Anandaraju Chits Pvt. Ltd.^[1], this Court held that Order XXI Rule 26 CPC does not apply to cases where the decree is being executed by the same Court which passed the decree. In the present case the E.P. was filed before the very same Court which had passed the decree earlier and consequently the application, under Order XXI Rule 26 CPC, could not have been entertained.

Reliance placed by Smt. N.P. Anjana Devi Satyanarayana, Learned Counsel for the respondent, on **Meda Hari Krishna v. Akula Seshamma**^[2] is misplaced. In **Meda Hari Krishna**², this Court held that an application, under Order XXI Rule 26 CPC, could not be filed by a third party, that too for purposes other than those mentioned in the rule. The application, in the present case, was to the very same Court which passed the decree and, in view of Order XXI Rule 26 CPC, the

respondent herein was disentitled to file such an application.

The fact, however, remains that the decree, execution of which sought, is an *ex parte* decree that too one which was passed on service of notice on the respondent being effected by substituted service by way of paper publication. The respondent has since filed an application in I.A. No.1332 of 2015 in O.S. No.530 of 2013 to condone the delay of 259 days in filing the petition to set aside the *ex parte* decree. The said I.A. is still pending on the file of the very same Court. The jurisdiction which this Court exercises, under Article 227 of the Constitution of India, is to prevent substantial injustice being caused to the parties before it. Permitting the petitioner herein to execute the decree, even before the application to condone the delay of 259 days in filing an application to set aside the *ex parte* decree is heard, would undoubtedly caused substantial injustice to the respondent.

I consider it appropriate, in such circumstances, to direct the Court below to hear and decide I.A. No.1332 of 2015 with utmost expedition and, in any event, on or before 15.04.2016. The Court below shall not proceed with E.P. No.18 of 2015 till 30.04.2016. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 18.03.2016.

Note: Issue copy by 22.03.2016

B/o
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^[1] 2007 (3) ALD 229

^[2] 2008(6) ALT 684