

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRP.No.1836 of 2010

ORDER:

The decree-holder in O.S.No.441 of 1998, on the file of the Court of the Chief Judge, City Civil Court, Hyderabad is the petitioner in the present revision filed under Section 115 of the Code of Civil Procedure and this revision assails the order dated 19.02.2010 passed by the said Court in EP.No.47 of 2009.

2. The facts and circumstances, leading to the filing of the present revision, are as under:

2.1. The petitioner herein instituted the above said suit against the respondent herein to declare that there was no concluded contract between the plaintiff and the defendant and further to declare the forfeiture of EMD of Rs.20,00,000/- as illegal and for a consequential direction to the defendant to pay a sum of Rs.33,20,000/- with interest @ 36% per annum from the **date** of suit till the date of realization and for costs.

2.2. The learned Chief Judge, City Civil Court, Hyderabad decreed the said suit on 14.08.2001 in part and the said decree reads as under:

- "1. That the suit of the plaintiff be and the same is hereby decreed in part, and declared that there was no concluded contract between the plaintiff and the defendant and forfeiture of EMD of Rs.20.00 lakhs is illegal and consequently.
2. That the defendant is directed to pay a sum of Rs.20.00 lakhs (Rupees twenty lakhs only) to the plaintiff with further interest @12% p.a., from 17.11.1996 till the date of payment.
3. That the rest of the suit claim be and the same is hereby dismissed.
4. That the defendants do pay to the plaintiff a sum of Rs.68590/- towards proportionate costs of the suit.

5. That the counter claim of the defendants be and the same is hereby dismissed.

6. That there shall be no order as to costs in counter claim.”

2.3. Challenging the validity of the said decree, the respondent Road Transport Corporation preferred CCCA.No.87 of 2002. In CMP.No.6665 of 2002, this Court on 16.04.2002, granted interim stay on the condition of the respondent Corporation depositing entire amount with interest to the credit of the suit within four weeks while permitting the decree-holder to withdraw the half of the amount without furnishing any security and the rest by furnishing security.

2.4. Eventually a Division Bench of this Court, by way of the judgment dated 19.09.2002 ordered modification of the decree passed by the trial Court by scaling down the rate of interest from 12% to 9% per annum from the date of decree till the date of realization. Thereafter, the decree-holder/petitioner herein carried the matter to the Hon'ble Supreme Court by way of filing Civil Appeal No.7978 of 2003 and the Hon'ble Apex Court allowed the said Civil Appeal and while setting aside the judgment of this Court restored the decree of the trial Court on the rate of interest.

2.5. Petitioner herein earlier filed EP.3 of 2005 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad, claiming a sum of Rs.7,91,404/-. An order was passed in EP.3 of 2005 on 25.11.2005, holding that the decree holder was entitled for an amount of Rs.7,90,404/-. Against the said order, the respondent-judgment debtor filed CRP.6987 of 2005. By way of an order dated 20.02.2008, while refusing to interfere with the order passed by the Court below, this Court granted time till 30.04.2008 for depositing the amount.

2.6. The Special Leave Petition filed by the respondent Corporation also ended in dismissal before the Hon'ble Supreme Court on 08.07.2008. Subsequently, the learned Chief Judge, City Civil Court, Hyderabad, taking note of the payments made by the respondent Corporation, closed the said EP.No.3 of 2005 as fully satisfied while observing that in the event of there being any amount payable by the judgment-debtor, the decree holder would be at liberty to file fresh EP. In the above background, the petitioner herein filed the present

EP.No.47 of 2009, claiming a further sum of Rs.4,14,680/- by way of attachment of immovables of the Judgment-debtor under Order 21 Rule 43 of the Code of Civil Procedure. Resisting the said EP.47 of 2009, the judgment-debtor/respondent herein filed a counter. The learned Chief Judge, by way of an order dated 19.02.2010 dismissed the said EP.No.47 of 2009. The said order is under challenge in the present Civil Revision Petition.

3. Heard Sri K.Subramanyam, learned counsel for the petitioner and Sri N.Vasudeva Reddy, learned counsel for the respondent Corporation.

4. It is contended by the learned counsel for the petitioner that the order passed by the Court below, dismissing the execution petition, is highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 21 Rule 43 of the Code of Civil Procedure. It is further submitted by the learned counsel that the Court below grossly erred in dismissing the execution petition without taking into consideration the calculation memo filed by the decree-holder and that the learned Chief Judge grossly erred in not taking into consideration the order passed in EP.3 of 2005 on 25.11.2005 wherein the executing Court declared that the decree-holder was entitled for an amount of Rs.7,90,404/- which was confirmed by this Court and the Hon'ble Apex Court.

5. On the contrary, it is contended by the learned Standing Counsel for the respondent-Road Transport Corporation that there is no error nor there exists any infirmity in the impugned order, warranting interference of this Court under Section 115 of the Code of Civil Procedure. It is the further submission of the learned Standing Counsel for the respondent-Corporation that pursuant to the interim orders granted by this Court in CMP.No.6665 of 2002 in CCCA.No.87 of 2002, the respondent Corporation deposited the entire amount including interest and the petitioner herein cannot seek interest on interest. It is also the submission of the learned counsel that the

judgment-debtor made complete payment, as such, no further amount is recoverable from the judgment debtor.

6. There is absolutely no controversy of the reality that pursuant to the orders of this Court in CMP.No.6665 of 2002 in CCCA.No.87 of 2002 dated 16.04.2002, the judgment-debtor deposited the entire amount as directed by this Court within the time stipulated. In EP.No.3 of 2005, the Court below directed the judgment-debtor to pay a sum of Rs.7,90,404/- and there is no dispute that the respondent herein deposited the said amount. There is absolutely no controversy on the issue that after the order of the Hon'ble Supreme Court restoring the decree of the trial Court, the judgment-debtor deposited a further sum of Rs.2,11,505/- towards dues of interest. In fact, obviously taking into consideration the provisions of Order 21 Rule 1 (4) of the Code of Civil Procedure the Court below refused to grant relief as sought by the petitioner herein. A perusal of the order under Challenge in clear and vivid terms discloses that the learned Chief Judge taking into consideration the entire material available on record including the amounts paid by the judgment-debtor on various occasions, recorded a categoric finding that the judgment-debtor paid the entire decretal amount and the decree-holder is not entitled for the future interest. Therefore, this Court finds no infirmity in the said findings recorded by the Court below.

7. For the aforesaid reasons, the revision is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date:16.12.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated December, 2016

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