HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition Nos.1476 and 1615 of 2015

Common Order:

C.R.P.No.1476 of 2015 is filed against the docket order dated 08-12-2014 in I.A.No.119 of 2013 in O.S.No.52 of 2007 passed by the Court of VI Additional District Judge, Kakinada, East Godavari district refusing to transfer the award and decree to the City Civil Court, Hyderabad, where the judgment-debtor is residing for the purpose of realisation; whereas C.R.P.No.1615 of 2015 is filed against the order dated 08-12-2014 in I.A.No.120 of 2013 in O.S.No.52 of 2007 passed by the said Court recording full satisfaction.

2. I have heard Sri G.Krishna Murthy, learned counsel appearing for the petitioner/decree-holder and Sri B.S.N. Naidu, learned counsel appearing for the 1st respondent/judgment-debtor.

3. Since common questions of fact and law would arise for consideration in both the revisions, they are disposed of by a common order.

4. The petitioner filed the suit for recovery of an amount of Rs.1,47,54,141=58 ps. which became due from the respondent under a Work Order dated 18-01-2003. The matter was settled before the

Lok Adalath at Kakinada on 17-3-2012 and an award was passed according to which, the petitioner agreed to receive a sum of Rs.80,00,000/- towards full and final settlement and the amount has to be paid in three instalments as per the terms of the award. The 1st respondent paid a sum of Rs.25,00,000/- on 17-3-2012 under a Pay Order and further agreed to pay a sum of Rs.25,00,000/- on or before 31-5-2012 and the balance amount of Rs.30,00,000/- on or before 30-6-2012. Condition No.6 of the award stipulates that if the 1st respondent commits default in payment of the 2nd and the 3rd instalments in its entirety, the petitioner is entitled to execute the award and realise the entire suit amount of Rs.1,47,54,141=58 ps. with subsequent interest on principal amount at the rate of 9% per annum from the date of suit till the date of realisation and costs.

5. The 1st respondent/judgment-debtor filed I.A.No.120 of 2013 stating that though he paid the entire amount under the award, the petitioner/decree-holder did not file the Memo of Full Satisfaction into the Court and therefore, he prayed the Court to record full satisfaction in O.S.No.52 of 2007.

6. The petition was opposed by the petitioner/ decree-holder contending that the 2nd and the 3rd instalments were not paid on the dates mentioned in

the award and further, the 1st respondent deducted TDS (Deduction of Tax at Source) from out of the amount payable under the award and the same is not in accordance with law. Therefore, he opposed recording of full satisfaction and also urged the Court to transfer the decree to the City Civil Court, Hyderabad for execution.

7. The learned Court below rejected the contentions put-forth by the petitioner and recorded full satisfaction which led to filing of these two civil revision petitions.

8. The point for consideration in these two revisions is whether the Court below is correct in recording full satisfaction and refusing to transfer the decree for execution.

9. There is no dispute about the fact that the entire amount under the award has been paid by the 1st respondent/judgment-debtor. The same fact was admitted by the petitioner vide execution petition by showing the amount paid by the 1st respondent. The learned Court below rightly held that the admission amounts to acknowledgement which debars the petitioner from taking the plea that the amount has not been paid on the dates stipulated in the award.

10. The other question which requires to be considered is whether the 1st respondent/judgment-debtor

is entitled in law to deduct the TDS.

11. The 1st respondent/judgment-debtor brought to the notice of the petitioner/decree-holder the fact that he made payments within the stipulated time after deducting Income Tax payable under the head "TDS". As to this, the contention of the petitioner/decree-holder is that there is no stipulation in the award enabling the payment of TDS and therefore, the 1st respondent is not entitled to deduct the amount paid towards TDS.

12. The learned Court below observed that the exchange of notices between the parties clearly shows that the judgment-debtor deducted the Income Tax and the same was also brought to the notice of the decree-holder. The Court below relied on a judgment in **M/s. Balkau Timbers (P) Ltd. v. P.B. State Industrial Development Corporation** (*Ex.Appeal No.406 of 2009 in Ex.P.No.123 of 1998, dated 23-12-2009*), wherein it is held as follows:

> "Tax deduction at source is to be done by the judgment-debtor as per law on all those amounts which are paid by the judgment-debtor for user of the premises in occupation of the judgment-debtor. If the decree-holder considers that the amount received by the judgment-debtor did not qualify of tax, the decree-holder can raise this issue with the tax authorities and not before this Court."

13. The petitioner/decree-holder filed execution petition before the Court below stating therein that the 1st

respondent/judgment-debtor paid the amount in pursuance of the award but he deducted the tax payable.

14. From the facts and circumstances which have been noticed herein-above, there is substantial compliance of the award passed in the Lok Adalath by the 1st respondent/judgment-debtor. The award amount relates to works contract and therefore, as per the settled legal position, the 1st respondent/judgment-debtor is entitled to deduct the TDS and pay the remaining amount to the petitioner/decree-holder. If for the sake argument it is accepted that the judgment-debtor is not entitled to deduct the TDS, the remedy of the decree-holder lies with the Income Tax Department but not before the Court below.

15. Therefore, I absolutely see no merit in both the civil revision petitions and consequently dismiss them. The miscellaneous petitions, if any, pending in these revisions shall stand closed. No costs.

R.KANTHA RAO, J.

19th January, 2016.
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HON'BLE SRI JUSTICE R.KANTHA RAO

C.R.P.Nos.1476 and 1615 of 2015
(Common Order)

19th January, 2016.
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