

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5557 of 2016

ORDER:

The un-numbered Civil Revision Petition is taken up for hearing from both sides appearance including respondent/ decree holder of permanent prohibitory injunction in O.S.No.950 of 2007 on the file of XI Junior Civil Judge, City Civil Court, Secunderabad, dated 29.06.2015.

2. The Decree Holder (for short 'D.Hr.') filed E.P.No.618 of 2016 under Order XXI Rule 32 C.P.C. The provision contemplates either attachment or arrest of the Judgment Debtors (for short 'J.Drs.'). where it found that there is a permanent prohibitory injunction decree and J.Drs. having opportunity to obey and willful dis-obey, for that an enquiry is contemplated by summoning the J.Drs. to appear and after enquiry and only on satisfaction of the twin requirements supra contemplated by the rule if at all, either to issue attachment or arrest warrant for detention in civil prison and for further consequences, as per the contemplation of law.

3. Here, in the E.P. filed before the lower Court, the executing Court issued directly a warrant for arrest, without notice to the J.Drs. 1 to 3, in directing the Court bailiff saying the violation of judgment and decree of the lower appellate

Court in which the trial Court decree merged and thereby to arrest the J.Drs. and to bring before the Court. It was the warrant dated 28.09.2016 by posting E.P. to 02.11.2016.

4. It is suffice to say, there is no service of notice, no enquiry even same is mandatory and it is not even a case of the J.Drs. in order to avoid the process of the Court are absconding by leaving jurisdiction of the Court, even like under Order XXXIX Rule 1 C.P.C. of arrest before judgment to secure presence to obtain bond in due performance of a decree eventually to be passed for any to issue said ex parte order.

5. No doubt, unless the decree is more than two years, Rule 22 of Order XXI C.P.C. notice is not contemplated. However, that does not mean, an arrest warrant directly can be issued without enquiry and without finding on the twin requirements for so called violation of permanent perpetual injunction decree in its execution under Order XXI Rule 32 C.P.C. Even Sections 74 and 94 C.P.C. have no application to the facts. Thereby, the impugned order is liable to be set aside.

6. No doubt, the D.Hr. filed E.A.No.752 of 2016 under Section 151 C.P.C. for grant of police aid preventing the J.Drs. from interfering with the decree schedule property and the

same it appears granted as per the D.Hr. though J.Drs. say of no order of police aid granted.

7. Once such is the case, so far as direction of the arrest of the J.Drs. concerned by the ex parte order, it is liable to be set aside with a direction to the execution Court to conduct enquiry and decide on merits. Needless to say pending enquiry, the J.Drs. by virtue of this order shall not interfere with the decree schedule property.

8. With the above directions, the Civil Revision Petition is disposed of. No order as to costs.

9. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.



Dr. B. SIVA SANKARA RAO, J

Date:01.11.2016
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