

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3426 of 2014

ORDER:

This is a civil revision petition under Section 115 of the Code of Civil Procedure, 1908, by the Decree Holder in E.P.No.355 of 2006 in O.S.No.426 of 2000 on the file of the learned I Additional Junior Civil Judge, Euru.

2. I have heard the submissions of *Sri Srinivas Emani*, learned counsel for the revision petitioner/ Decree Holder ('Dhr') and *Sri K.Staram*, learned counsel for the respondent/judgment debtor ('JDr'). I have perused the material record.

3. The grievance of the Dhr is that the executing Court by its order dated 30.06.2014 erroneously granted Rs.3,500/- only per month as damages/ mesne profits for the period from 01.06.2000 to 16.06.2006 and further wrongly directed the JDr to only pay the said amount, after deducting the amount, which was deposited by him during the period from 01.06.2000 to 16.06.2006, and incorrectly held that an arrest warrant will be issued against the JDr on his failure to pay the said amount within three months from the date of the receipt of a copy of the said order.

4. Before proceeding further, it is necessary to re-produce infra the last two paragraphs of the said order of the executing Court in the aforesaid execution petition.

"In view of the above discussion, this Court has fixed the mesne profits of Rs.3,500/- per month for the period from 1-6-2000 to 16-6-2006 to be paid by the J.Dr to D.Hr by deducting the rent already paid by him. Therefore, the D.Hr is entitled for arrest of J.Dr only if the J.Dr has failed to pay mesne profits, which is fixed in this petition. Hence, the J.Dr is directed to pay the remaining amount of the D.Hr. within 3 months from the date of this order, failing which the D.Hr is at liberty to seek arrest of J.Dr. Hence, three months time is fixed for payment of remaining mesne profits amount.

In the result, the petition is allowed and mesne profits is fixed as Rs.3,500/- and the J.Dr is directed to pay rent amount by deducing the amount which was deposited by him from 1-6-2000 to 16-6-2000 within 3 months from the date of this order and if the J.Dr has failed to pay the same within 3 months he is going to be arrested. As per order in E.A. 461

of 2014, the D.Hr is directed to pay court fee for the mesne profits fixed by the Court.”

(Reproduced verbatim)

4. The undisputed facts as submitted at the time of hearing are, in brief, as follows:

The DHr obtained a decree in the aforementioned suit against the JDr, the respondent herein. The relevant terms of the decree are as follows:

1. That the defendant is and hereby directed to vacate the plaint schedule premises within three months from the date of decree i.e 2-9-2002 and put the plaintiff in the vacant possession of the same; and
2. That the defendant be and hereby directed to pay the damages to the plaintiff from 1-6-2000 to the date of delivery of vacant possession; and
3. That the defendant do pay to the plaintiff a sum of Rs.3,908-00 towards the costs of the suit, bearing his own costs of Rs.2,122/-.”

(Reproduced verbatim)

5. The first appeal in A.S.No.139 of 2002 was dismissed by the learned I Additional District Judge, Eluru, vide judgment dated 24.11.2003. The second appeal was dismissed as withdrawn on 30.04.2007. Thereafter, the execution petition was filed by the DHr for recovery of damages/ mesne profits @ Rs.9,000/- per month for the period from 1.6.2000 till 16.06.2006. The JDr filed E.A.No.1979 of 2007 under Section 47 of the Code contending that the EP is not maintainable in view of the terms of the decree and that the executing Court cannot grant the relief claimed by the DHr. Having accepted the contentions of the JDr, the executing Court dismissed the execution petition. Aggrieved thereof, the DHr filed C.R.P.No.174 of 2009 before this Court. This Court directed restoration of the execution petition to the file of the executing Court, having found that the DHr is only enforcing the right given under the decree, which is recognized under Order XX Rule 12 of the Code, and that if the JDr disputes the quantum of the amount that is being claimed by the DHr, an enquiry can be held by the executing Court and that the amount due and payable by the JDr to the DHr can be determined on such an enquiry by the executing Court. Thus this Court directed that an enquiry be conducted in regard to the damages due and payable by the JDr. Pursuant thereto, an enquiry was conducted by the executing Court. During the course of enquiry,

PWs 1 to 5 and RW 1 were examined and exhibits A1 to A8 and B1 and B2 were marked. On merits, the trial Court determined the mesne profits/ damages. The operative portion of the order is already extracted supra. It is an admitted and undisputed fact that the JDr had already paid the amount that was due as per the aforesaid orders of the executing Court.

6. The learned counsel for the DHr contends that the DHr is entitled to damages or mesne profits @ Rs.27,000/- per month as the JDr was in illegal occupation of the valuable and income yielding property and that the executing Court failed to appreciate the facts and evidence properly and the legal position in the correct perspective and that the executing Court failed to consider the actual income realized or probable income realizable from the property and also the rental values in the locality during the relevant period. The learned counsel for the DHr would submit that since the amount as determined by the executing Court was already paid by the JDr, the DHr's right to recover the correct quantum of damages/ profits stands precluded, if the executing Court terminates the execution petition and that therefore, the revision is filed.

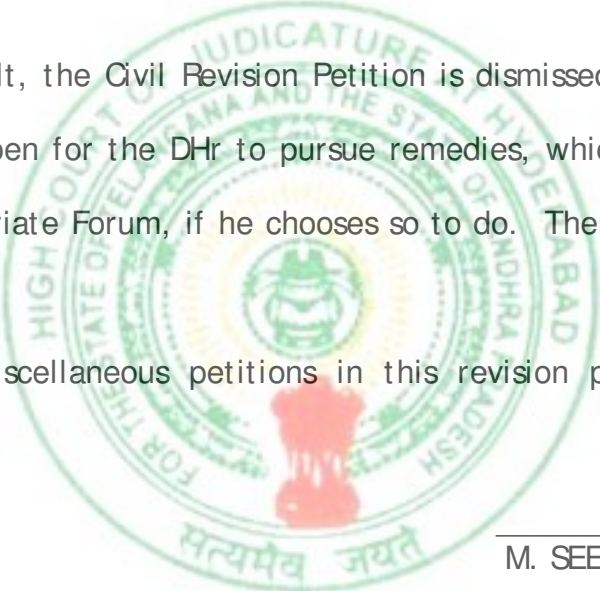
7. Per contra, the learned counsel for the JDr would submit that if the DHr is aggrieved of the quantum of damages or the mesne profits determined by the executing Court, his remedy lies elsewhere and that he is not entitled to file the revision and stall the termination of the EP despite the fact that no amount is due and payable under the decree as per the orders of the executing Court as on today. The learned counsel for the JDr, therefore, submits that the revision is misconceived and is liable to be dismissed and that if the DHr has got any grievance, he can pursue the legal remedies, if any, available to him before an appropriate forum, if he wishes to do so.

8. Though the petition filed by the DHr is an execution petition and not an interlocutory application Under Order XX Rule 12 of the Code, eventually, as per the orders of this Court in C.R.P.No.174 of 2009, the executing Court

determined the mesne profits due and payable by the JDr and gave necessary and relevant directions. The said orders are duly complied with by the JDr. The law is well settled that an appeal lies against a final decree as well as an interim final decree. In the light of the facts of the case, which are undisputed, the revision petition is wholly misconceived and is liable to be dismissed as not maintainable as the challenge is to the order determining mesne profits, where by the Dhr was also directed to pay the Court fee on the amount of mesne profits determined before realization of the determined mesne profits. Therefore, the revision petition filed by the Dhr to simply stall the passing of the order terminating the execution petition by the executing Court is liable to be dismissed in the facts and circumstances of the case.

9. In the result, the Civil Revision Petition is dismissed. It is needless to state that it is open for the Dhr to pursue remedies, which the law permits, before an appropriate Forum, if he chooses so to do. There shall be no order as to costs.

Pending miscellaneous petitions in this revision petition shall stand closed.



M. SEETHARAMA MURTI, J

22nd November, 2016
RAR