

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2534 OF 2016

ORDER:

This revision, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code'), is filed to set aside the Order dated 04.05.2016 in E.P. No.27 of 2014 in I.A. No.729 of 2012 in O.S. No.416 of 2010 passed by the I Junior Civil Judge, City Civil Court, Hyderabad.

02. The first respondent filed suit for eviction and mesne profits in whose favour decree was passed and later inquiry was ordered to ascertain the mesne profits and to pass a final decree under Rule 12 of Order XX of the Code by appointing an Advocate-Commissioner and ascertained mesne profits @ Rs.7,500/- per month. The first respondent has filed E.P. No.27 of 2014 under Rule 43 of Order XXI of the Code, for realization of the decretal amount of mesne profits @ Rs.7,500/- per month, by attaching movables and sale of the same. Upon considering the argument of both the counsel, the trial court issued movable attachment warrant against the Judgment debtors. Aggrieved thereby, the present revision petition is filed on various grounds and one of the main grounds urged before this Court by the learned counsel for the revision petitioner, during argument, is that court fee is required to be paid under Section 41 of the A.P. Court Fee and Suit Valuation Act, 1956, (for short, 'Court Fee Act'), to pass a final Decree. Therefore, the Decree is not executable.

03. Whereas, Sri Vedula Srinivas, learned counsel for the first respondent, contended that execution petition for attachment of movables can be entertained when the Decree Holders are ready to pay court fee, whatever ordered by the trial court in view of sub-Section (3) of Section 41 of the Court Fee Act and requested to allow the execution petition pending before the executing Court.

04. Undisputedly, the suit was filed for eviction and mesne

profits. Mesne profits were ascertained at the time of presenting the plaint, and the court fee towards estimated mesne profits was paid, after ascertaining of mesne profits by the Advocate Commissioner appointed under Rule 12 of Order XX of the Code. A final decree was passed even without collecting the court fee on the difference of estimated mesne profits and actual mesne profits ascertained by Advocate-Commissioner, though it is obligatory on the part of the Decree Holder to pay Court fee under Section 41 of the Court Fee Act

05. Sub-Section (3) of Section 41 of the Court Fee Act creates an interdict on the execution of the decree for mesne profits without payment of Court fee and it reads as follows:

“Where for a period subsequent to the date of the decree or final decree, such decree or final decree directs payment of mesne profits at a specified rate, such decree or final decree shall not be executed until the fee computed on the amount claimed in execution is paid”

06. In view of the bar contained under sub-Section (3) of Section 41 of the Court Fee Act, final Decree is not executable till the court fee computed on the amount claimed is paid.

Therefore, the Decree itself is not in accordance with law and, hence the execution petition is liable to be dismissed. However, the first respondent is permitted to pay the court fee subject to permissibility under law and, on drafting the final decree after payment of court fee, the first respondent/Decree Holder is entitled to execute the decree for realization of the decretal amount, in any mode prescribed under Order XXI of the Code.

07. In the result, the civil revision petition is allowed, setting the order in E.P. No.27 of 2014 in I.A. No.729 of 2012 in O.S. No.416 of 2010, passed by the I Junior Civil Judge, City Civil Court, Secunderabad. No costs.

08. Miscellaneous petitions, if any, pending in this revision

shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 16.08.2016

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