

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.2015 AND 2167 OF 2016

COMMON ORDER

These Civil Revision Petitions under Section 115 CPC are filed by the judgment-debtor in E.P.No.56 of 2008 on the file of the learned Principal Senior Civil Judge, Ranga Reddy District. He is aggrieved by the separate orders dated 21.01.2016 passed by the Executing Court in the said E.P., whereby E.A.No.53 of 2016 filed by the respondent/decreree-holder was allowed restoring the E.P. and issuing an Order 21 Rule 48 CPC warrant against the judgment-debtor.

Heard Sri V.V.N.Narasimham, learned counsel for the petitioner/judgment-debtor, and Sri M.Devender Reddy, learned counsel for the respondent/decreree-holder.

Admittedly, E.P.No.56 of 2008 was closed by the Executing Court by order dated 10.07.2009. The said order further gave liberty to the decreree-holder to file a fresh E.P. whenever required.

While so, it appears that the respondent/decreree-holder filed E.A.No.53 of 2016 in E.P.No.56 of 2008 seeking its restoration. No notice was given to the petitioner/judgment-debtor before such restoration. The validity of the restoration of the E.P. by the Executing Court is called in question before this Court.

When the E.P. filed in the year 2008 was closed in July, 2009 and restoration thereof was sought nearly seven years later in 2016, the Executing Court ought to have put the judgment-debtor on notice before resorting to restoration of the E.P. In this regard, reference may be made to Order 21 Rule 22 CPC which provides that in the event an application for execution is made more than two years after the date of the decree, the Executing Court shall ordinarily issue a notice to the person against whom execution is applied for. The Proviso to Order 21 Rule 22(1) CPC states that no such notice would be necessary in the event two years have elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution.

This being the legal position, had the decree-holder taken recourse to the liberty granted by the Executing Court under its order dated 10.07.2009 while closing the E.P., the Executing Court would normally have ordered notice to the petitioner/judgment-debtor before proceeding further in the matter. It was therefore not open to the respondent/decreed-holder to seek restoration in 2016 of the E.P. which was closed as long back as in the year 2009 behind the back of the petitioner/judgment-debtor. The trial Court grossly erred in overlooking these aspects of the matter. The orders under revision are accordingly set aside and the matter is remitted to the trial Court for consideration afresh of E.A.No.53 of 2016 filed in E.P.No.56 of 2008 by the respondent/decreed-holder. The Executing Court shall pass appropriate orders on the said E.A. on merits and in accordance with law after hearing both parties.

The Civil Revision Petitions are allowed. Any amounts attached and recovered pursuant to the orders under revision, which have now been set aside, shall forthwith be returned to the petitioner/ judgment-debtor. Pending miscellaneous petitions in the CRPs. shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

22nd JULY, 2016

Note: Issue C.C. by 25.07.2016.

B/o Svv