

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.939 OF 2016

ORDER :

The Civil Revision Petition is filed against the impugned order dated 19.11.2015 passed in E.A. No.1337 of 2015 in E.P. No.85 of 2007 on the file of II Junior Civil Judge, City Civil Court, Hyderabad.

2) Heard the learned counsel for petitioner and learned counsel for respondents. Perused the material on record.

3) It is the submission across the bar, from both sides, that there was a decree for permanent Injunction, while execution under Order XXI Rule 32 C.P.C as per the J.Dr in compromising the execution lis in two criminal cases viz., C.C. Nos.42 and 47 of 2006. Pursuant to it, they entered into compromise in May, 2010 and reduced into writing by both parties and the copy of the same enclosed. In further saying referring to the terms of compromise even C.C Nos.42 and 47 of 2006 on the file of VIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad were compounded and the D.Hr being a party to the compromise terms as per which the disputed passage, in relation to the permanent injunction relief, divided between them as part No.1 and part No.2, by allotting part No.1 exclusively to D.Hr and part No.2 exclusively to J.Dr and they allegedly constructed the wall dividing the same, thereby, the decree, however, unexecutable from the division of

the disputed lis by relinquishing respective rights by allotting exclusive rights and even the compromise terms are over. Instead of filing an application for withdrawal without considering the issue No.5 in memorandum of compromise, the D.Hr has proceeded further and the executing Court ordered to send J.Dr to civil prison and he filed E.A. No.1337 of 2015 under Order XXI Rule 26 C.P.C and that was also ended in dismissal on 19.11.2015, thereby the impugned order of the lower Court liable to be set aside and the E.P proceedings are liable to be terminated.

4) Whereas, it is the submission of the learned counsel for the D.Hr that the so-called compromise terms are not correct and compounding the criminal cases are not with reference to the terms of compromise and there is nothing to withdraw the execution petition for violation of permanent injunction relief when invoked, and the lower Court was right in not staying the order to send the J.Dr to civil prison and the revision is liable to be dismissed.

5) In view of the disputed facts, in terms of compromise, containing the signatures that requires adjudication and once the compromise effected, the parties are bound for the settlement with a contractual obligations therein for the executing Court to determine by giving opportunity to the petitioner/ J.Dr to file an application to that effect under Section 47 C.P.C and the executing Court shall determine the same by virtue of this direction and there shall be interim stay enforcing warrant to commit the J.Dr to

civil prison in the meantime extending till three weeks from the date of receipt of this order. In the meantime, the executing Court shall decide such an application to be filed within 15 days from the date of receipt of the order to enquire and dispose of the same within two (2) months from the date or receipt of this order. If it could not be possible for the executing Court to dispose of, as above it shall seek for extension of time and pending the same by virtue of this order, by suspension of the warrant to commit the accused person to civil prison.

6) Accordingly, the revision is disposed of. No order as to costs.

7) Miscellaneous petitions pending, if any, in the Civil Revision Petition shall stand closed.

Date:05.08.2016
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Dr. B. SIVA SANKARA RAO, J

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