

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.3045 of 2016

ORDER:

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This Revision is filed challenging the order dt.04-05-2016 in E.P.No.108 of 2012 in O.S.No.2 of 2010 of the I Additional Junior Civil Judge, Bhimavaram.

2. The respondent filed the suit O.S.No.2 of 2010 on the file of the Principal Junior Civil Judge, Bhimavaram against the 1st petitioner for the latter's eviction from the plaint schedule property and for delivery of vacant possession to him.

3. The said suit was decreed *ex parte* on 31-03-2011. Thereafter E.P.No.108 of 2012 was filed by respondent under Order XXI Rule 35 C.P.C. to evict the legal representatives of the 1st petitioner from the E.P. schedule property and for delivery of the same.

4. Counter affidavit was filed on behalf of the petitioners opposing this application stating that there is a tenant in a portion of the E.P. schedule property, that only a portion of the E.P. schedule property is in their possession and that the entire E.P. schedule property is not in possession of the petitioners.

5. Before the Court below, the respondent examined

P.Ws.1 and 2 and the petitioners examined R.W.1.

6. The Court below held that the lease in favour of the tenant has not been produced by petitioners; that the plea of petitioners that applications under Order IX Rule 13 C.P.C. and Section 5 of the Limitation Act, 1963 to condone the delay in filing the petition to set aside the *exparte* decree were pending before the Court of Principal Junior Civil Judge, Bhimavaram also cannot be a ground to stop execution, since the petitioners did not even mention the I.A. numbers of these applications, the dates of adjournment or even the stage of those applications.

7. Challenging the same, this Revision is filed.

8. The principal contention of the learned counsel for petitioners Sri K.L.N. Swamy is that the petitioners had filed an application under Section 5 of the Limitation Act, 1963 to condone the delay of 535 days in seeking to set aside the *exparte* decree dt.31-03-2011 in O.S.No.2 of 2010 along an application under Order IX Rule 13 C.P.C. before the Principal Junior Civil Judge, Bhimavaram, and since the said applications are pending, the Court below ought not to have allowed the Execution Petition.

9. I am of the view that there is no force in the said submission. The decree in the suit had not been stayed by a superior Court nor has it been set aside. Therefore the

Court below has no option except to allow its execution. Mere pendency of an application under Section 5 of the Limitation Act, 1963 to condone the delay in filing application to set aside the *exparte* decree and pendency of an application under Section Order IX Rule 13 C.P.C. cannot be a ground to stay the execution of the decree. Therefore in my considered opinion, the Court below has rightly exercised its jurisdiction in allowing the Execution Petition.

10. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference under Article 227 of the Constitution of India.

11. However, in the event the decree of eviction in O.S.No.2 of 2010 of the Principal Junior Civil Judge, Bhimavaram is set aside, it is open to petitioners to apply for restitution invoking Section 144 C.P.C.

12. The Civil Revision Petition is accordingly dismissed. No costs.

13. As a sequel, miscellaneous petitions pending if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 24-06-2016
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