

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4487 OF 2016

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, filed by the petitioner/judgment debtor is directed against the docket order, dated 16.07.2016, of the learned II Additional Junior Civil Judge, Kurnool, passed in E.P.No.186 of 2016 in O.S.No.964 of 2010.

2. I have heard the submissions of the learned counsel for the petitioner. Though the respondent is served with notice, she did not enter appearance. I have perused the material record.

3. Learned counsel for the petitioner would submit as follows: -
“Earlier the decree holder-respondent filed E.P.No.150 of 2014. During the pendency of said E.P., as per the settlement between the parties, an amount of Rs.45,000/- was paid towards full and final settlement and satisfaction of the decree debt. Having agreed to the said settlement, the decree holder received the said sum and allowed the said E.P., to be dismissed for default. Contrary to the said settlement, the decree holder had again filed the present EP. The said EP is filed beyond two years from the date of decree. In the present EP, without notice to the judgment debtor, attachment of movables viz., Fridge, Colour TV, Cooler, Ceiling Fans (2), Iron Almarah (1), Honda Activa, all worth Rs.47,000/-, was ordered. Therefore, the order impugned is unsustainable.”

4. I have given earnest consideration to the facts and submissions. Since the EP is pending before the executing Court, the judgment debtor ought to have approached the said Court and raised his contentions/objections before the executing court by filing a counter in the EP instead of approaching this Court. In the well considered view of

this Court, the questions - 'Whether there was a settlement or not? and, whether the payment was made as per the alleged settlement towards full and final satisfaction of the decree debt?' - are pure questions of fact; and, hence, the same require adjudication after due enquiry into the matter. The said questions cannot be decided without affording an opportunity to both the parties to adduce evidence, if they desire so to do.

5. In that view of the matter, the present revision petition is clearly misconceived and is liable to be dismissed. However, during the course of hearing, the learned counsel for the judgment debtor/petitioner made a request to stay the impugned order by imposing any reasonable conditions and liberty may be reserved to the judgment debtor to file a counter and contest the EP in the interest of justice.

6. In the result, the Civil Revision Petition is dismissed, however, reserving liberty to the petitioner/judgment debtor to file his counter by raising his factual as well as legal contentions, which the law permits, and contest the EP subject to the condition that the petitioner shall deposit, within four weeks from the date of receipt of a copy of this order, a sum of Rs.30,000/- out of the decree debt, to the credit of E.P.No.186 of 2016 in O.S.No.964 of 2010 on the file of the Court of the learned II Additional Junior Civil Judge, Kurnool, Kurnool District, without prejudice to the rights and contentions of both the parties. On such deposit, there shall be interim stay of the impugned order till the disposal of the EP, on merits, by the executing Court. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

September 11, 2017
Lmv