

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5229 OF 2011

ORDER:

This civil revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed challenging the order dated 12.09.2011 in E.P. No.05 of 2008 in O.S. No.195 of 1993 passed by the I Additional Senior Civil Judge, Nellore, dismissing the execution petition filed under Rule 35 of Order XXI of CPC on the ground that the second appeal is pending before this court.

The petitioner obtained decree for eviction and it was confirmed in the first appeal, now the second appeal in S.A. No.1318 of 2007 is pending, but no interim stay was granted by this court.

The executing court in paragraph 4 of the order concluded that in view of pendency of second appeal, ordering delivery of possession is not just and proper and dismissed the execution petition.

The order passed by the executing court is irregular and illegal as no stay was granted in the second appeal by this court, but still filing second appeal would not operate as an automatic stay. Therefore, dismissing the execution petition on the ground of pendency of second appeal cannot be sustained. Hence, the order dated 12.09.2011 in E.P. No.05 of 2008 in O.S. No.195 of 1993 is liable to be set aside.

In the result, the civil revision petition is allowed, setting aside the order dated 12.09.2011 in E.P. No.05 of 2008 in O.S.

No.195 of 1993 on the file of I Additional Senior Civil Judge, Nellore, while directing the executing court to restore the E.P. to its original number and decide the same, in accordance with law. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:11.07.2017
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