

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.2991 of 2017

ORDER:

The civil revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), is filed by the Petitioner-DHr, aggrieved by the order, dated 06.01.2017, passed by the learned Judge, Family Court-cum-VI Additional District Judge, Kadapa, in E.P.No.11 of 2014 in L.A.O.P.No.438 of 2001, whereunder the learned Judge closed the E.P. proceedings.

2. The Petitioner-DHr filed E.P.No.11 of 2014 in L.A.O.P.No.438 of 2001, under Order 21 Rules 43 & 64 C.P.C. for attaching the schedule mentioned car belonging to the Respondent-JDr for realization of E.P. amount of Rs.1,60,52,882/-. Learned Judge closed the said E.P. observing that the Respondent-JDr deposited Rs.83,43,069/- towards 50% of the decretal amount as directed by the High Court in the appeal which is pending, the Petitioner-DHr can pursue his case before this Court.

3. The grievance of the Petitioner-DHr as well as the Respondent-JDR is peculiar. Both the counsel would represent, in the impugned order, particularly in para 7, the learned Judge mentioned certain figures, which they are unable to comprehend. They brought to the notice of this Court that the Execution Court has mentioned as if the Petitioner-DHr claimed Rs.1,39,99,817/- basing on the decree passed. However, according to the learned counsel for the petitioner, in E.P.No.11 of 2014, the claim of the Petitioner-DHr is Rs.1,60,52,882/- and not Rs.1,39,99,817/-, as observed by the Execution Court.

4. On the other hand, the learned Government Pleader for Arbitration appearing for the respondent would submit that the Execution Court mentioned as if the Respondent-JDr filed the Calculation Memo showing the decretal amount as Rs.1,31,53,284/-, but upon verification of the Calculation Memo filed by the learned Government Pleader before the Execution Court, no such figure was mentioned.

5. Both the counsel also brought some other figures referred to by the lower Court in its order and stated as either they have not mentioned in their respective pleadings or they could not comprehend how those figures were mentioned.

6. Learned counsel for the petitioner would submit that the ultimate order of the Execution Court is to the effect that Respondent-JDr deposited 50% of the decretal amount as directed by the High Court in L.A.A.S.No.176 of 2011 which is not correct. Hence, unless the impugned order is set aside and an opportunity is given to both the parties to submit their respective Calculation Memos and a fresh order is passed by arriving at the exact amount due to the Petitioner-DHr and the exact amount deposited by the Respondent-JDr pursuant to the direction of this Court, they will be put to severe hardship.

7. Learned G.P. for Arbitration would, also represent in similar manner.

8. In view of the above submissions of the learned counsel for both the parties, the Civil Revision Petition is allowed by setting aside the impugned order, dated 06.01.2017, in

E.P.No.11 of 2014 in L.A.O.P.No.438 of 2001 with a direction to the Execution Court to hold an enquiry afresh by giving an opportunity to both the parties and to pass an order on merits within a period of two (2) months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous applications pending, if any, in both the civil revision petitions shall stand closed.

JUSTICE U.DURGA PRASAD RAO

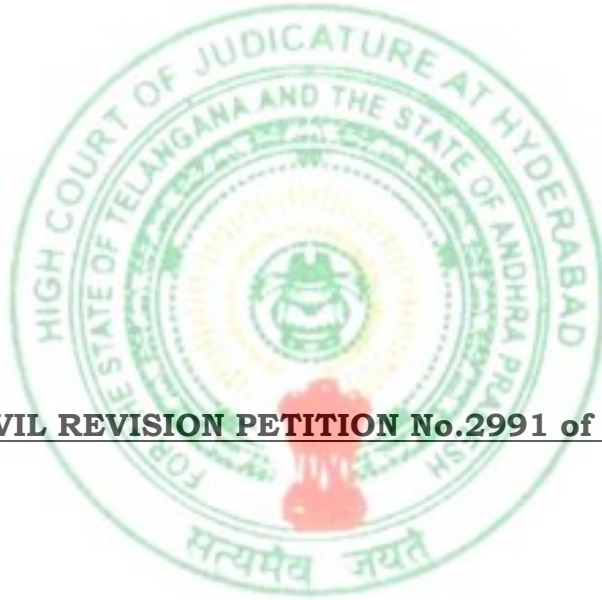
Dated: 11th September, 2017

Note: Issue C.C. in one (1) week.

(B/o.)
KL



165

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**CIVIL REVISION PETITION No.2991 of 2017**Dated: 11th September, 2017

KL