

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Civil Revision Petition No.5138 of 2011

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure is filed challenging the Order, dated 6.9.2011 in E.A. No.506 of 2009 in E.P.No.60 of 2006 in O.S.No.547 of 2002 passed by the Principal Junior Civil Judge, Dhone, Kurnool, dismissing the petition filed under Order 21 Rule 2 of C.P.C. for recording the full satisfaction based on Ex.P1. The executing court dismissed the petition assigning its own reasons.

2. The petitioner filed the petition under Order, 21 Rule 2 of C.P.C. alleging that the respondent issued a receipt marked as Ex.P1, dated 8.2.2009, but the same could not be produced before the Court immediately to get the full satisfaction recorded in terms of Order 21 Rule 2 of C.P.C. Therefore, the petitioner filed petition requesting the executing court to record full satisfaction based on Ex.P1.

3. The respondent filed counter denying the material allegations *inter alia* contending that the document Ex.P1 was obtained by force and he was confined in the house of one, Y.Krishna Goud, subjected him to physical cruelty, in this connection he gave a report to the Kodumur Police Station on 19.2.2009 for necessary action. He further contends that the document was not issued by him towards settlement of the E.P. amount and prayed for dismissal of the petition.

4. During enquiry, P.Ws. 1 to 3 were examined, Exs.P1 to P3 were marked on behalf of petitioner, R.Ws.1 and 2 were examined and Exs.R1 to R3 were marked on behalf of respondent.

5. Upon hearing the arguments of both the counsel, the Court concluded that the said claim based on Ex.P1 is not correct and declined to record full satisfaction exercising power under Order 21, Rule 2 of C.P.C.

6. Aggrieved by the order passed by the executing Court the present revision is filed on the ground that the executing Court did not appreciate the evidence on record regarding payment of amount, though the respondent did not dispute specifically about the execution of Ex.P1 and that the executing Court has committed an error in dismissing the petition filed under Order 21, Rule 2 of C.P.C.

7. During hearing, this Court raised an objection with regard to maintainability of the petition in view of the limitation prescribed under Article 125 of Limitation Act for recording full satisfaction under Order 21 Rule 2 of C.P.C. as the Ex.P1 was allegedly issued on 8.2.2009, but petition was filed on 6.7.2009. The counsel for the petitioner vehemently contended that there is no limitation for recording full satisfaction under Order 21 Rule 2 of C.P.C. and based on the evidence, the Court can record full satisfaction, requested to allow the revision.

8. None appeared for the respondent.

9. According to the petitioner, Ex.P1 was issued on 8.2.2009 allegedly by the respondent-D.Hr. towards full satisfaction and if the amount is paid outside the Court, the Court shall certify such payment by following the

procedure under Order 21, Rule 2 of C.P.C. According to Order 21, Rule 2 of C.P.C. where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly. The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly. According to clause (3) of Rule 2 no payment shall be recorded unless the payment is made in the manner provided under clause (1) of Rule 2 or the payment or adjustment is proved by documentary evidence, the payment or adjustment is admitted on behalf of decree holder. Here in this case, as stated above, Ex.P1 was allegedly issued by the respondent on 8.2.2009 and the petitioner filed the petition on 6.7.2009 almost after five months and not within the period of limitation for recording the adjustment or satisfaction of decree under Article 125 of the Limitation Act where the limitation period provided is 30 days. Therefore, the court is not expected to record such payment.

10. In fact, plea of limitation was not raised by the respondent, however, by exercising the power under Section 3 of Limitation Act, even though the plea of limitation was not set up as defence, the Court can take cognisance of it and decide whether the claim is within time or not. Therefore, by

exercising power under Section 3 of Limitation Act, I hold that the claim of the petitioner is barred by limitation. Hence, the Civil Revision Petition is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

12. As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:05-06-2017

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