

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2549 of 2016

ORDER:

This civil revision petition is filed under Section 115 of CPC challenging the order dated 28.4.2016 in I.A.No.210 of 2016 in A.S.No.9 of 2016 on the file of the Court of XIII Additional District Judge, Gajuwaka.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. A perusal of the record reveals that the respondent herein filed O.S. No.56 of 2011 on the file of the Court of Senior Civil Judge, Gajuwaka against the petitioner herein for perpetual injunction. Pending the suit, the respondent herein filed application seeking *ad interim* injunction. The trial Court granted *ad interim* injunction in favour of the petitioner and the same was vacated on 28.4.2015. There was an interim injunction in favour of the respondent herein for a period of about four months, during the pendency of the suit. Ultimately, the trial Court decreed the suit on 03.2.2016. Feeling aggrieved by the decree and judgment of the trial Court, the petitioner herein preferred A.S. No.9 of 2016 on the file of the Court of XIII Additional District Judge, Gajuwaka. Along with the appeal, the petitioner filed I.A. No.210 of 2016 seeking stay of execution of the decree in O.S. No.56 of 2011.

4. The learned counsel for the respondent submitted that so far the respondent has not filed Execution Petition.

5. The apprehension of the petitioner is that the respondent may file application for execution of the decree. Such an

apprehension is not supported by any material as no Execution Petition is filed. In the absence of filing of Execution Petition, stay of execution of the decree in O.S. No.56 of 2011 does not arise. The appellate Court considered all these aspects and dismissed I.A.No.210 of 2016. The revisional Courts shall not lightly interfere with the discretionary orders passed by the courts below unless such orders are perverse or legally not sustainable. There is no illegality or irregularity in the order passed by the lower appellate Court. Hence, I am of the considered view that it is not a fit case to interfere with the order passed by the lower appellate Court.

6. Accordingly, the civil revision petition is dismissed. However, dismissal of this revision does not preclude the petitioner herein to file application under Order XLI Rule 5 of CPC as and when respondent files Execution Petition. The lower appellate Court may dispose of the appeal without being influenced by any of the observations made in the order in I.A. No.210 of 2016. Miscellaneous petitions, if any pending in this civil revision petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.1.2017.

YS