HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.6227 and 6272 OF 2016

COMMON ORDER:

The self same person by name Smt.Soghra Begum, who maintained E.P (SR) Nos.3797 and 3799 of 2016 for execution of the respective compromise decrees in O.S. Nos.908 and 909 of 2016 respectively on the file of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, impugning the docket order of the lower Court dated 01.12.2016 rejecting said two applications saying that there is no executable decree passed against the Judgment Debtor (for short 'J.Dr') No.6, maintained the two revisions.

2) Heard learned counsel for the revision petitioner and perused the material on record.

3) A perusal of the cause title of the unnumbered E.Ps show that the J.Dr Nos.1 to 5 are endorsed as not necessary parties but for seeking orders only against J.Dr No.6—respective banks viz., State Bank of India, Malakpet represented by its Manager and Yes Bank, Jubilee Hills Branch represented by its Manager having shown as respondents.

4) Further, on perusal of respective compromise decrees passed by the learned XVII Additional Senior Civil Judge, City Civil Court, Hyderabad in both the suits shows that they are in favour of the plaintiff—Decree Holder (for short 'D.Hr') against respective six J.Drs with ten clauses. Clause No.6 of both decrees speak that the plaintiff and defendants 1 to 3 have agreed and admitted to pay the debt of Rs.10,00,000/- to 4th defendant and Rs.5,00,000/- to 5th defendant towards full and final settlement,

without any further profit or interest. Insofar as 6th respondent is concerned, clause (9) speaks with common wording that the plaintiff and defendants 1 to 3 have agreed and admitted that the bank account and locker in the State Bank of India, Malakpet Branch, Hyderabad shall operate, run, manage, transact the locker and account No.10133996979 and 351281250124; and account No.048890700000 of Yes Bank, Jubilee Hills Branch, Hyderabad, by the plaintiff and the respective banks shall be directed to permit the plaintiff and after that, the plaintiff do permit Mohammed Abed Ahmed to solely operate, run and manage the above accounts. The suits against the respective 6th defendant banks were ended in dismissal from reading of clause (10) of the compromise decree.

5) A perusal of all clauses, particularly clauses 1 to 8, speak regarding amounts of bank accounts which are to be shared among the family members as per the Mohammedan Succession Act, and the entitlement of which amount, who to operate, which is, no doubt, subject to the liquidation of the pre-existing debts of the deceased to succeed the estate show as the respective co—defendants. No doubt, since they have compromised the matter, the lower Court did not grant any relief in favour of the banks while observing that no executable decrees were passed against the 6th respondent banks.

6) Once there is a decree as defined under Section 2 (2) C.P.C, it can be executed subject to its finality without any appeal as contemplated by Section 96 C.P.C and the application for execution, unless it is in a money decree, in the case of J.Dr present in Court at the time of pronouncement of judgment and requires to be arrested to take into custody therefrom on oral

application, must be in writing. What Order XXI Rule 11 (2) C.P.C contemplates the modes of execution are four types and there is a provision for simultaneous execution even. The notice to the J.Drs requires mandatorily, provided, the decree is a two years old one by the time of execution.

7) Keeping these principles in mind, by sitting in revision against the impugned orders, leave about, the notices to the respondents in the revisions are not necessary for hearing and disposal of the revisions from the factum of E.Ps at the unnumbered stage were ended in rejection and not after putting forth appearance by the J.Drs including 6th defendant banks. Once there is no relief granted in the compromise decrees against the banks, the question of executability against the banks does not arise. Once such is the case, against the impugned rejection, there is practically nothing to interfere.

8) It is no doubt, not the be all and end all in dismissal of the revisions, from further arguments submitted saying but for the amounts are permitted by the banks, the further enforcing of the decrees' relief against the defendants 1 to 5 in favour of the plaintiff does not arise. Had it been genuine to consider, the defendants 1 to 5 should have been impleaded in the execution petitions instead of endorsing as not necessary parties and should have been sought the relief what is granted in the compromise decrees against them, otherwise there are no legs to stand the execution petitions.

9) Had the D.Hr filed the execution petitions against the J.Dr Nos.1 to 5 for the reliefs in respect of and against them

covered by the compromise decrees respectively, there could be a concession from the executing Court invoking Section 151 C.P.C to order to send for the amounts lying with the two banks to the Civil Court deposits so as to work out the reliefs between the D.Hr and the J.Dr Nos.1 to 5 *interse* out of the amounts as per the two compromise decrees, but it was not done in these cases on hand.

10) Having regard to the above, the revisions are disposed of by left open such remedies to work out by filing execution petitions against J.Drs.1 to 5 and by filing an application under Sections 47 and 151 C.P.C praying to direct the respective 6th respondent—banks to send for the amount lying with them to the Court deposit to adjust to the credit of the compromise decrees in the suits lis for distribution of the amounts among the D.Hr and J.Drs pursuant to the compromise decrees. So far as operation of bank locker, needless to say on appointing Advocate-commissioner it sought to cause open by the Bank for only invention of articles, valuables and any money or deposit papers lying therein and then to permit for operation, if any as per compromise terms if sought further. No order as to costs.

11) Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.03.01.2017
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