

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.872 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in E.A.No.299 of 2016 in E.P.No.77 of 2014 in O.S.No.57 of 2010 dated 24.01.2017 passed by the Senior Civil Judge, Adoni, whereby, the Executing Court granted stay of further proceedings in E.P.No.77 of 2014 by 27.02.2013, exercising power under Order XXI Rule 26 r/w Section 151 C.P.C, with a condition to deposit 1/4th of decree amount on or before 23.02.2017, failing which the petition shall stand dismissed.

For the sake of convenience, the petitioner and respondent in the civil revision petition will hereinafter be referred as judgment debtor and decree holder respectively.

The respondent/decreed holder filed O.S.No.57 of 2010 against the petitioner/judgment debtor for recovery of amount and for costs, based on promissory note dated 02.05.2007. The Senior Civil Judge decreed the suit on 28.02.2013 in favour of the respondent/decreed holder, to recover the suit amount from the petitioner with future interest @ 12% p.a from the date of suit till the date of decree and @ 6% p.a. from the date of decree till the date of realization, on the principal sum of Rs.4,50,000/-. Thereupon, the decree holder filed E.P.No.77 of 2014 on the file of Senior Civil Judge, Adoni, for attachment and sale of the E.P. scheduled property of the judgment debtor. Immediately, the judgment debtor filed E.A.No.299 of 2016 in E.P.No.77 of 2014 in

O.S.No.57 of 2010, under Order XXI Rule 26 and Section 151 C.P.C, seeking stay further proceedings in E.P.No.77 of 2014 during pendency of the petition to set-aside the *exparte* decree dated 28.02.2013, on the ground that the decree holder obtained *exparte* decree without issuing summons to the judgment debtor. The Court below allowed E.A.No.299 of 2016, subject to condition of depositing 1/4th of decreetal amount on or before 23.02.2017. Assailing the order in E.A.No.299 of 2016, the judgment debtor filed the present civil revision petition.

It is the case of the petitioner herein/judgment debtor that, an *exparte* decree was obtained by the decree holder and the decree holder filed execution proceedings for attachment and sale of the E.P. scheduled property of the judgment debtor. But, at the stage when the property was about to be attached, the judgment debtor filed E.A.No.299 of 2016 to set-aside the *exparte* decree passed against him on 28.2.2013.

No doubt, the Court can exercise power under Order XXI Rule 26 C.P.C to grant stay of execution of decree for limited period, enabling the judgment debtor to obtain an order in a petition filed under Order IX Rule 13 C.P.C. But, the Trial Court passed an order granting stay for unlimited period, subject to deposit of 1/4th of decreetal amount.

Granting stay for unlimited period is illegal and it cannot be sustained. Subrule (3) of Rule 26 of Order XXI C.P.C, dealt with power to require security from, or impose conditions upon, judgment-debtor and according to it, before making an order to stay execution or for the restitution of property or the discharge of

the judgment-debtor, the Court shall require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

The Trial Court considered that, it is appropriate to insist for deposit of 1/4th of decretal amount as security, in compliance of Sub-rule (3) of Rule 26 of Order XXI C.P.C. Therefore, the condition imposed by the Trial Court, though appears to be onerous, it is in accordance with Sub-Rule (3) of Rule 26 of Order XXI C.P.C. Therefore, I find no ground to set-aside the order in E.A.No.299 of 2016 in E.P.No.77 of 2014 in O.S.No.57 of 2010 dated 24.01.2017 passed by the Senior Civil Judge, Adoni, by exercising power under Section 115 C.P.C.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:18.07.2017

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