

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.3295 OF 2017

Dated:04.12.2017

Between:

M/s. Patny Motors, rep., by its
Proprietor Anuj Patny, S/o. Sunil
Patny, aged 27 years, Occ: Business,
R/o.D.No.5-1-13, Bank Street,
Dornakal, Warangal District

.. Petitioner

And

Ishtyaq Ahmed Aleem,
S/o. Abdul Razak, aged about
53 years, R/o.D.No.36-8-86/1A,
Santi Nagar, Vijayawada

.. Respondent



The Court made the following:

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ORDER:

This revision is filed by the petitioner/judgment debtor aggrieved by the order in E.P.No.1 of 2017 in O.S.No.66 of 2014.

2. Plaintiff filed O.S.No.66 of 2014 on the file of the Senior Civil Judge, Mahabubabad, praying to direct the defendant to deliver vacant possession of plaint schedule property to him and for recovery of arrears of rent for the months of March and April, 2014. The defendant was set *ex parte* by order dated 11.11.2014. Defendant filed I.A.No.68 of 2015 under Order IX Rule 7 C.P.C. The same was dismissed by order dated 11.03.2016 and therefore the earlier order setting the defendant *ex parte* holds good. The suit was considered on merits and after hearing the plaintiff, it was decreed with costs and defendant was directed to deliver the vacant possession of the plaint schedule premises to the plaintiff within two months from the date of judgment.

3. Alleging non-compliance of the directions and for enforcement of the decree, plaintiff filed E.P.No.1 of 2017.

4. A reading of the order dated 21.04.2017 passed in E.P.No.1 of 2017 would disclose that on 21.04.2017, learned counsel representing the defendant and learned counsel representing the plaintiff and the plaintiff were present. A joint memo was filed on behalf of the plaintiff and the defendant stating that they have come to an understanding to resolve the

dispute amicably. The Court recorded the terms of settlement and granted time for vacation of the premises till 30.06.2017. Subject to the amounts as agreed to be paid by the defendant, the Court directed the plaintiff not to disturb the possession of the defendant till 30.06.2017. On 03.07.2017, neither the defendant nor his counsel were present. Having noticed that the order of the Court was not complied, warrant of attachment under Order XXI Rule 36 of C.P.C. along with police protection and break opening the lock of the premises were ordered.

5. This revision is filed contending that the Court of Senior Civil Judge ought not to have ordered the petition to break open the lock of the premises when I.A.No.119 of 2017 to condone the delay in seeking restoration of the suit and the petition to recall the *ex parte* decree are pending consideration.

6. In ordinary circumstances, the Court would have accepted the claim of the petitioner that since the petition to condone the delay in filing the application to set aside the *ex parte* decree is pending, to stay the execution proceedings in the meanwhile. However, in the peculiar facts of this case, the Court is not inclined to accept the said plea. As seen from the order of the Court below in E.P.No.1 of 2017, parties have arrived at an understanding where under the petitioner/defendant agreed to vacate the suit premises on 30.06.2017. This understanding was reached after filing I.A.No.119 of 2017. The further orders are passed due to non-compliance of the terms of settlement.

7. Having agreed to resolve the dispute, it is not open to the defendant to contend that as the applications filed for condonation of delay to restore the suit and application to set aside *ex parte* decree are pending, the Court below ought not to have issued warrant of attachment under Order XXI Rule 36 C.P.C. As seen from the order of the Court below while recording the terms of settlement between the parties and while granting time till 30.06.2017 to vacate the subject premises, the matter was directed to be listed on 03.07.2017 on which date there was no representation for the defendant and Court was not informed of compliance of earlier understanding.

8. At this stage, learned counsel for the petitioner submitted an undertaking affidavit deposed by Anuj Patny on 04.12.2017. The affidavit would disclose that the petitioner agrees to vacate the suit premises within six months and undertakes to vacate and hand over the physical possession of the suit schedule premises within six months and further undertakes to pay the requisite rent as per the agreement. The said affidavit is taken on record.

9. In view of the undertaking given, this Court is of the opinion that the dispute stands resolved.

10. The Civil Revision Petition is accordingly disposed of granting six months time to the petitioner commencing from 01.12.2017 to vacate the subject premises. In terms of the undertaking given, petitioner shall vacate and hand over the physical possession of subject premises on or before

31.05.2018. The petitioner shall also pay monthly rent payable till 31.05.2018 including arrears, if any. If the petitioner does not comply with the undertaking given or does not vacate the premises or does not pay the rent, it is open to the decree holder to proceed against the petitioner in accordance with law. The decree holder is permitted to withdraw the amount deposited pursuant to the interim order dated 11.07.2017. There shall be no order as to costs.

Miscellaneous Petitions, if any, filed in this Civil Revision Petition shall stand closed.

Date:04.12.2017

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P. NAVEEN RAO, J

