

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2538 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C., aggrieved by the order dated 03.04.2017 passed in O.E.P.No.27 of 2009 in O.S.No.205 of 2000 on the file of the Junior Civil Judge, Pakala, wherein E.P. filed under Order XXI Rule 35 (3) of C.P.C. to deliver possession of the E.P.schedule property in terms of the decree dated 08.12.2008 passed in O.S.No.205 of 2000 was allowed.

2) The facts in issue are as under:

The respondents herein filed O.S.No.205 of 2000 seeking declaration of right and title over the schedule property, which was decreed on 08.12.2008. Aggrieved by the same, an appeal came to be filed before the Additional District Judge, Chittoor vide A.S.No.31 of 2009 and the same is pending consideration. Pending appeal, the respondents herein filed O.E.P.27 of 2009 to deliver possession of the schedule property in terms of the decree in the said suit.

3) A counter came to be filed by the petitioners contending that they preferred an appeal and have fair

chances of success in the appeal and hence prayed to keep the E.P. in abeyance.

4) After considering the material on record, the Court below allowed the O.E.P. Challenging the same, the present Civil Revision Petition is filed.

5) Learned counsel for the petitioners would submit that the aggrieved by the judgment and decree in O.S.No.205 of 2000, an appeal came to be filed before the appellate court, which is pending consideration, as such the trial Court ought not to have passed any order in the E.P.

6) The same is strongly opposed by the learned counsel for the respondents stating that the appeal filed before the appellate authority was dismissed for default and that the same is not restored till date. According to her, an application seeking restoration of appeal is filed with abnormal delay, which is still pending. Hence, submits that there is nothing wrong or illegal in passing orders in the E.P.

7) Learned counsel for the petitioners would submit that pending appeal there was a compromise between the parties and in view of the compromise, they did not pursue the matter but the appellate Court dismissed the appeal, which fact was not known to them. Thereafter, the E.P. came to be filed for execution of the decree. It is submitted by the

learned counsel for the petitioners that only after receipt of notices in E.P. they came to know about the dismissal of the appeal, and immediately thereafter they filed an application to restore the appeal with a delay which is neither willful nor wanton. These facts are opposed by the learned counsel for the respondents stating that if really there was a compromise the same should be brought to the notice of the appellate authority and steps should have been taken in accordance with law to get the appeal closed. Without doing so, the petitioners cannot plead that the impugned order is illegal and improper.

8) Though various grounds are raised, learned counsel for the petitioners seeks a direction to the appellate authority to dispose of the application filed to restore the appeal, which is posted for hearing on 18.08.2017 and also pleads that no coercive steps may be taken till 19.08.2017.

9) Learned counsel for the respondents though opposed, but however states that any order passed by this Court staying the impugned order, should not come in the way of the appellate authority in deciding the application on its merits.

10) Having regard to the rival submissions, the Civil Revision Petition is disposed of staying the execution of the

impugned order till 19.08.2017. Meanwhile, the petitioners are at liberty to take further steps for disposal of the application on 18.08.2017 in accordance with law. It is made clear that no further extensions will be granted thereafter. It is also made clear that the order staying the impugned order till 19.08.2017 shall not come in the way of the Courts below in deciding the matter on its own merits.

11) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

04.08.2017
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JUSTICE C. PRAVEEN KUMAR