

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5048 OF 2010

ORDER:

Heard the learned counsel for the revision petitioner/ decree holder (for short DHR) and taken as heard the 3rd respondent among three judgment debtors (for short 'JDRs') by endorsing respondents 1 and 2 as not necessary parties and notice sent to the 3rd respondent is returned as continuously absent is a sufficient service thereby taken as heard and perused the grounds urged in the revision and the impugned order of the lower Court dated 18.03.2009 in E.P.No.78 of 2008 in O.S.No.38 of 1981.

In a decree for permanent injunction against the violation under Order XXI Rule 32 C.P.C., the execution application is filed to commit JDR No.3/ respondent No.3 into civil prison. The prayer in the E.P. dated 18.09.2008 at para 12 reads that the Court may be pleased to peruse the decree and issue Rule 22 notice to JDR No.3, as JDR No.3 violated the injunction orders on 04.02.2008, thereby issue notice, enquire and pass such other orders by committing JDR No.3 to civil prison and grant police aid to implement the injunction decree.

What is contemplated from wording of Order XXI Rule 32 C.P.C. is decree against a person and having opportunity to obey and willfully disobeyed. There is nothing in the prayer of willful violation of the decree or willful disobedience to attract Order XXI Rule 32 C.P.C. Thereby, the very prayer is ambiguous. So far as committing of JDR No.3 to civil prison is concerned, but for, if at all to grant police aid.

Leave it as it is. Coming to the impugned order of the lower Court, saying no one should be vexed twice for the same reason is the principle and there is a double jeopardy that apply for the fact that earlier E.P.No.25 of 2009 filed and it was dismissed on 19.11.2002 concerned, that order of the lower Court with that observation is basically unsustainable. Law is fairly settled including from the latest expression of the Apex Court in Prabhakara Adiga v. Gowri in Civil Appeal NOs.3007-3008 of 2017 dated 20.02.2017, that injunction runs with the land and a decree for permanent injunction once runs with the land, there can be any number of execution petitions for its violations and the bar of 12 years for execution of a decree like other decrees or barred by three years for mandatory injunction decree provided by the Indian Limitation Act has no application for the violation of the permanent injunction decree. Thus, the order of the lower Court is basically unsustainable and against the law. However, there are no grounds to grant arrest of the J.D.R in the absence of the wording of having opportunity and willfully disobeyed. The mere disobedience is different from willful disobedience. Once such is the case, the trial Court at least should have been considered to provide police aid for implementation of the decree. This Court, by scanning with the law in this regard in C.R.P.SR No.19487 of 2014 and CRP MP No.9567 of 2014 dated 19.10.2016 observed that despite no grounds to arrest and commit the JDR for violation of permanent injunction to civil prison, the Court can grant the police protection is a step in aid for implementation of the decree passed by the Court to prevent is disobedience for no one can be allowed to take law to their hands.

Accordingly, the Civil Revision Petition is partly allowed by setting aside the dismissal order of the lower Court and by directing the lower Court to provide police aid to the petitioner for implementation of the decree of the Court.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Date:27-12-2017

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