

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Civil Revision Petition No.447 of 2017

Between:

Shaik Mahammad Rafiuddin.

... Petitioner/J.Dr

And

Gummala Narayana Reddy.

...Respondent/D.Hr

DATE OF JUDGMENT PRONOUNCED: 20.03.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
 2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
 3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for the Petitioner

: Sri Nagaraju Naguru

^ Counsel for the Respondent

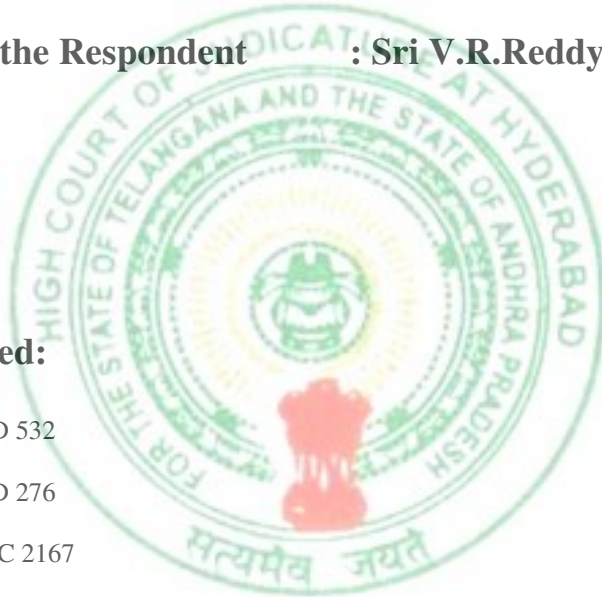
: Sri V.R.Reddy Kovvuri

< Gist:

> Head Note:

? Cases referred:

- 1) 1997(6)ALD 532
- 2) 2001(6)ALD 276
- 3) AIR 2006 SC 2167
- 4) AIR 1989 AP 264



THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.447 of 2017

ORDER:

This C.R.P is filed by the petitioner/Judgment Debtor(J.Dr) aggrieved by the order dated 30.11.2016 in E.P.No.157 of 2015 in O.S.No.158 of 2011 passed by the learned Principal Junior Civil Judge, Proddatur, Kadapa District, ordering warrant of attachment of salary of the J.Dr for the realization of the E.P amount of Rs.70,360/- while rejecting the contention of the J.Dr to the effect that as per agreement dated 28.08.2015, the Decree Holder (D.Hr) received Rs.30,000/- from him in full satisfaction of the decreetal amount.

2) Heard arguments of Sri Nagaraju Naguru, learned counsel for petitioner and Sri V.R.Reddy Kovvuri, learned counsel for respondent.

3) Impugning the order of the execution Court, learned counsel for petitioner would vehemently argue that the decree holder received Rs.30,000/- in full satisfaction of the decreetal amount vide Ex.B.1— agreement but he gave a go by to the said out of Court settlement and filed E.P and sought for attachment of the salary of the J.Dr and the trial Court without considering the fact that the J.Dr by cogent evidence i.e, by examining the scribe and attestor of Ex.B.1, who clearly deposed that under the said agreement D.Hr received Rs.30,000/- in full satisfaction of the decreetal amount, erroneously negated the contention of the J.Dr and issued warrant of attachment. He thus prayed to allow the CRP and

dismiss the E.P in view of the settlement between the parties out of Court.

4) Per contra, the contention of learned counsel for respondent/D.Hr is twofold:

i) Firstly, he would argue that the trial Court in its order raised genuine suspicion about the validity of Ex.B.1 and rightly rejected the said document;

ii) Secondly and alternatively, he would argue that even assuming the contention of J.Dr to be true, still the said plea of out of Court settlement cannot be accepted in view of the bar engrafted under Order XXI Rule 2 CPC as J.Dr failed to get the alleged out of Court payment recorded through the executing Court within the period of limitation. To this effect he placed reliance on the following decisions:

i) *K.Sitarama Rao vs. Smt. D.Usha Sundari and others*¹

ii) *Haji P.Basheer Saheb vs. P.Rajanna*²

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this CRP to allow?”

6) **POINT**: Sofaras the genuinity of Ex.B.1 is concerned, the trial Court raised certain doubts viz., firstly that according to J.Dr, the elders compromised between J.Dr and D.Hr but RW.3 stated that he did not

¹ 1997(6)ALD 532

² 2001(6)ALD 276

know who conducted mediation whereas RW.2 stated that the mediation was conducted in the year 2010 which militated against the claim of RW.1(J.Dr) that the mediation was held one month prior to Ex.B.1; secondly there were criminal cases and civil disputes between RW.3 and D.Hr and inspite of the same RW.3 stated as if he has talking terms with D.Hr which was strange and unbelievable; thirdly as per RWs.1 to 3, strangely the stamp paper was brought by D.Hr himself and further, RWs.1 to 3 and D.Hr were residents of Proddatur but the stamp under Ex.B.1 was brought from Vempalle and was scribed in a Tea bunk opposite to Court Complex etc., and the executing Court thus disbelieved Ex.B.1 and issued warrant of attachment. I have carefully gone through the order impugned and I see no illegality or perversity in the said order. Now coming to the alternative contention of respondent/ D.Hr, as per Order XXI Rule 2(2) CPC, if any payment or adjustment is made by the J.Dr in due discharge of the decree, he shall apply to the Court to issue a notice to the D.Hr to show cause, on a date to be fixed by the Court, why such payment or adjustment should not be recorded as certified and if after service of such notice, the D.Hr fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly. Order XXI Rule 2 (3) CPC lays down that the payment or adjustment which has not been certified or recorded as aforesaid shall not be recognised by any Court executing the decree. Be that as it may, Art.125 of Limitation Act says that recording

of adjustment or satisfaction of a decree has to be made within 30 days from the date of payment or adjustment.

7) In the instant case, E.P.No.157 of 2015 was filed on 24.08.2015. As per J.Dr, he paid D.Hr Rs.30,000/- under Ex.B.1 on 28.08.2015 following the out of Court settlement. However, the petitioner/J.Dr did not apply before the executing Court for recording of the payment under Ex.B.1 within one month from the date of Ex.B.1 in terms of Order XXI Rule 2 CPC. He brought to the notice of the Court about the alleged payment of Rs.30,000/- by way of out of Court settlement through his counter dated 25.01.2016 for the first time. Thus, it is clear that the J.Dr has not followed the mandate prescribed under Order XXI Rule 2 CPC. The Apex Court and our High Court have narrated the effect of non-recording of the satisfaction. In ***Padma Ben Banushali and another vs. Yogendra Rathore and others***³, the Apex Court observed thus:

“Para 12: The problem can be looked into from another angle on the basis of the maxim "generalalia specialibus non derogant". Section 47, as pointed out earlier, gives full jurisdiction and power to the executing court to decide all questions relating to execution, discharge and satisfaction of the decree. Order XXI Rule 3, however, places a restraint on the exercise of that power by providing that the executing court shall not recognise or look into any uncertified payment of money or any adjustment of decree. If any such adjustment or payment is pleaded by the judgment-debtor before the executing court, the latter, in view of the legislative mandate, has to ignore it if it has not been certified or recorded by the court.

³ AIR 2006 SC 2167

Para 13: The general power of deciding questions relating to execution, discharge or satisfaction of decree under Section 47 can thus be exercised subject to the restriction placed by Order XXI Rule 2 including Sub-rule (3) containing special provisions regulating payment of money due under a decree outside the court or in any other manner adjusting the decree. The general provision under Section 47 has, therefore, to yield to that extent to the special provisions contained in Order XXI Rule 2 which have been enacted to prevent a judgment-debtor from setting up false or cooked-up pleas so as to prolong or delay the execution proceedings. The aforesaid aspects were highlighted in Sultan Begum's case (supra).”

Our High Court in ***P.Narasaiah vs. P.Rajoo Reddy⁴, K.Sitarama Rao***’s case(1 supra) and ***Haji P.Basheer Saheb***’s case(2 supra) also expressed similar view. In view of clear exposition of the law, the contention of the J.Dr cannot be upheld.

8) In the result, there are no merits in the CRP and accordingly, the same is dismissed. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand dismissed.

U. DURGA PRASAD RAO, J

Dt. 20.03.2017

scs

⁴ AIR 1989 AP 264