

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.153 of 2017 & 5767 of 2016

COMMON ORDER:

CRP.No.153 of 2017 is filed by the plaintiff-DHr (hereinafter, 'the plaintiff') assailing the order, dated 04.11.2016, of the learned Senior Civil Judge, Mahaboobabad, passed in IA.No.313 of 2016 in OS.no.11 of 2016.

CRP.No.5767 of 2016 is filed by the JDr-defendant (hereinafter, 'the defendant') assailing the order, dated 04.11.2016, passed in EA.No.62 of 2016 in EP.No.42 of 2016 in OS.No.11 of 2016.

I have heard the submissions of *Sri V. Ravi Kiran Rao*, learned counsel appearing for the plaintiff, and of *Sri Chikkudu Prabhakar*, learned counsel appearing for the defendant. I have perused the material record.

As the decision that may be made in one CRP will have a bearing on the decision to be made in the other CRP and as the contentions and the issues involved are having a close relation, these two revisions are being disposed of by this common order.

The facts borne out by the record and discernable from the submissions made by the learned counsel for both the parties, in brief, are as follows:

The plaintiff's suit against the defendant was decreed *ex parte*, on 15.07.2016. The defendant filed IA.No.313 of 2016 under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908. The said application was allowed by docket order, dated 04.11.2016. The said order reads as under:

'In the result, the petition is allowed. The petitioner/defendant is directed to deposit 10% of the decreetal amount, which is calculated at Rs.64,400/- costs of the suit being Rs.20,914/- and further costs of Rs.1,000/-

amounting to Rs.86,314/- on or before 22.11.2016, else the petition shall stand closed for non compliance of the conditions.'

Aggrieved of the above order allowing the petition of the defendant subject to conditions, the plaintiff filed CRP.No.153 of 2017, *inter alia* contending that the trial Court ought not to have allowed the petition of the defendant and ought not to have set the *ex parte* decree aside as sufficient cause was not shown by the defendant for setting aside the *ex parte* decree. Be that as it may.

Pursuant to the *ex parte* decree, the plaintiff filed E.P.No.42 of 2016. Since the defendant already filed IA.no.313 of 2016 for setting aside the *ex parte* decree, in the pending EP, the defendant filed EA.No.62 of 2016 seeking stay of all further proceedings in the EP till the disposal of IA.no.313 of 2016. However, by the order impugned in CRP.no.5767 of 2016 the executing Court dismissed the said application. The operative portion of the said order reads as under:

'In the above circumstances, in view of the prayer in the present petition, the petition is disposed of accordingly, subject to the compliance of the conditions in IA.No.313 of 2016 in OS.No.11 of 2016. The petitioner is further at liberty to file another petition, if he so desires at a later point of time.'

At the hearing, learned counsel for both the sides submitted and the learned counsel for the defendant fairly conceded that as the defendant has not complied with the conditions imposed in the order passed in IA.No.313 of 2016, the said petition stood dismissed for non compliance of the said conditions.

In EA.no.62 of 2016 the only relief claimed is to stay the proceedings in the EP till the disposal of IA.no.313 of 2016. Since IA.no.313 of 2016 stood disposed of on its dismissal in the circumstances stated above, the relief claimed in CRP.no.5767 of 2016 filed by the defendant against the orders

passed in EA.no.62 of 2016 has become infructuous. Further, for the same reason, that is, the dismissal of the petition in IA.No.313 of 2016 for non compliance of the conditions imposed in the order passed in the said petition, the CRP filed by the plaintiff assailing the orders in the said application has also become infructuous.

Hence, in both the revision petitions no cause survives for adjudication and accordingly both the revision petitions are liable for dismissal.

Resultantly, both the Civil Revision Petitions are dismissed as infructuous and as no cause survives for adjudication in both the Revision Petitions. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these revision cases shall stand closed.

21.08.2017
VJI



M. SEETHARAMA MURTI, J