

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.5507 OF 2011

ORDER:

This civil revision petition is filed under Section 115 of CPC challenging the order dated 30.9.2009 in E.P. No.54 of 2008 in O.S. No.174 of 2007 on the file of the Court of Senior Civil Judge, Gajuwaka.

2. Heard the learned counsel for both the parties and perused the material available on record.

3. The petitioners herein filed O.S. No.174 of 2007 on the file of the Court of Senior Civil Judge, Bhimavaram against the respondent herein for recovery of money. The trial court passed ex parte decree. Thereafter, the petitioners filed E.P. No.54 of 2008 on the file of the Court of Senior Civil Judge, Gajuwaka for attachment of movable properties in execution of the decree in O.S. No.174 of 2007. The respondent filed counter in the E.P. stating that it has paid the entire amount including the decretal amount to the petitioners. During the course of enquiry, on behalf of the petitioners, the second petitioner examined himself as P.W.1 and no documents were marked on their behalf. On behalf of the respondent, R.W.1 was examined and Exs.B1 and B2 were marked. Basing on the oral, documentary evidence and other material available on record, the Executing Court dismissed the E.P. Hence, the present revision petition.

4. The predominant contention of learned counsel for the petitioners is that the E.P. was dismissed under the misconception that the respondent has paid the alleged amount prior to filing of the suit. P.W.1 is the competent person to say whether the respondent-Judgment debtor paid the E.P. amount or not. The learned counsel for the respondent-Judgment debtor cross-

examined the P.W.1 at length in order to establish Judgment debtor paid the entire amount. P.W.1 in unequivocal terms deposed that he has received an amount of Rs.7,84,000/- from Judgment debtor. His testimony further reveals that he has received EMD amount of Rs.23,000/- and additional security amount of Rs.49,028/- from the respondent. A perusal of the record reveals that the respondent came to know about the passing of the *ex parte* decree in the suit after receipt of the summons in the E.P. The respondent filed counter contending that the respondent has paid the entire amount to the petitioners. The respondent has substantiated the stand taken by it by eliciting admissions from P.W.1.

5. A careful perusal of the cross-examination of P.W.1 clearly reveals that he received the entire amount including the E.P. amount. In such circumstances, the E.P. is not maintainable. The Executing Court considered the material available on record in right perspective and arrived at a conclusion that the respondent-Judgment debtor has paid the entire amount to the petitioners as admitted by the P.W.1. I am fully agreeing with the findings recorded by the Executing Court. There is no illegality or irregularity in the order passed by the Executing Court, which warrants interference of this Court.

6. Accordingly, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 12.4.2017
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