

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.613 of 2017

ORDER:

This petition under Section 115 CPC is filed challenging the order dated 02.11.2016 in E.A.No.516 of 2016 in E.P.No.129 of 2015 passed by V Senior Civil Judge, City Civil Court, Hyderabad.

The petitioner herein filed E.A.No.516 of 2016 in E.P.No.129 of 2015 under Section 47 read with Section 151 CPC, to dismiss the E.P. on the ground of executability of the order, dated 07.02.2015 passed by this Court in Contempt Case No.1903 of 2014. The executing Court by the impugned order, turned down the objection raised by the petitioner on the ground that the order passed by this Court in C.C.No.1903 of 2014 is executable.

In the present revision, Sri Gopal Govind Naik, counsel for petitioner, reiterated the contentions and while placing reliance on the judgment of **Ashok Asandas Baherwani v. Ishwar Prakash Chopra**¹, he would contend that the order in contempt proceedings cannot be executed.

Whereas, counsel for respondents instead of placing reliance on any judgment, passed on a commentary on Section 36

¹ 1998 CrLJ 1530

of the Code of Civil Procedure and later, passed on a copy of judgment of Bombay High Court in **Kilachand Devchand & Co. v. Ajodhyaprasad Sukhanand and others**², in support of his contention that it is an executable order.

Admittedly, the mortgage debt was discharged and on such discharge, the respondents herein who mortgaged the property are entitled for return of the documents which they deposited with the creditor. Full satisfaction is not recorded by the executing Court and E.P.No.49 of 1990 was closed, later. During pendency of the said E.P., the respondents filed E.A.No.56 of 2009 under Order XXXIV Rule 5 CPC for return of the documents deposited by them creating a mortgage by deposit of title deeds. The executing Court dismissed E.A.No.56 of 2009 vide order, dated 21.01.2013. But, in the revision, the said order was set aside by this Court in CRP.No.1149 of 2013 vide order dated 28.04.2014 directing the petitioner herein to return the documents. The said order is not challenged before any higher Court. Therefore, the petitioner herein is bound by the order in CRP.No.1149 of 2013 dated 28.04.2014.

Since the petitioner did not comply with the direction issued by this Court in CRP.No.1149 of 2013, the respondents moved this Court by filing Contempt Case No.1903 of 2014

² AIR 1934 Bombay 452

under the provisions of the Contempt of Courts Act, 1971. In the order, dated 27.02.2015 in C.C.No.1903 of 2014, this Court made certain observations in the last few lines and they are extracted hereunder:

“However, whether the documents were taken return either by the Bank or the respondent and whether the documents are still in the Court are facts, which are to be verified. Therefore, it is just and fair to direct the respondent to deliver to the petitioners, the documents as per the orders of this Court within two months from the date of the receipt of a copy of this order. Failing such compliance, the petitioners shall approach the Court of execution and file an appropriate execution application and seek the remedies, which the law permits. The points are accordingly answered.”

Taking advantage of the observation that the respondents shall approach the Court of execution, they filed E.P.No.129 of 2015 for execution of order passed in the Contempt Case. This Court while disposing of the Contempt Case, permitted the respondents to approach the executing Court for return of the documents by filing necessary E.P. It does not mean that the order passed by this Court in the Contempt Case can be executed. This Court while disposing of the Contempt Case, instead of imposing any punishment for willful violation or disobedience of the orders passed by this Court in CRP.No.1149 of 2013, granted liberty to the respondents to file Execution Petition independently. But, surprisingly, the respondents filed E.P.No.129 of 2015 for execution of order, dated 27.02.2015 passed by this Court in the

Contempt Case. Therefore, E.P. filed for execution of the order in Contempt Case is not maintainable, as this Court permitted the respondents to approach the Court of execution for return of the documents which they are entitled to claim in view of Order XXXIV Rule 5 CPC. Therefore, the respondents at best are entitled to approach the Court of execution to execute the order passed by this Court in CRP.No.1149 of 2013 but not the order in Contempt Case. Hence, E.P.No.129 of 2015 filed by the respondents is not maintainable but the executing Court without understanding the purport of the order in Contempt Case, passed the impugned order.

The legal position relied on by both the counsel is unnecessary for deciding the real controversy between the parties.

Therefore, the Civil Revision Petition is allowed, while permitting the respondents to file E.P. for execution of order dated 28.04.2014 passed by this Court in CRP.No.1149 of 2013.

Consequently, pending Miscellaneous Petitions, if any, shall stand closed.

M.SATYANARAYANA MURTHY, J

21st JUNE, 2017.

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