

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No. 2573 OF 2017

ORDER:

The judgment debtor in E.P.No.98 of 2015 in O.S.No.517 of 2005, on the file of Principal Junior Civil Judge, Kadiri, Anantapur District, is the petitioner in the present Revision, filed under Section 115 of Code of Civil Procedure.

The Revision calls in question, the order dated 06.04.2017 passed by the said Court, allowing the E.P. filed by the respondent/decree holder.

Heard.

It is contended by the learned counsel for the petitioner that the order passed by the learned Principal Junior Civil Judge is erroneous, contrary to law and opposed to the object of the provisions of Order XXI Rule 37 of Code of Civil Procedure read with Section 51 of Code of Civil Procedure. It is further contended by the learned counsel that the respondent herein filed the present EP by suppressing the fact that he received the amount from the petitioner.

On the contrary, it is contended by the learned counsel for the respondent that the order passed by the Court below, which is impugned in the present Revision is strictly in accordance with law and there is no infirmity in the impugned order and in the absence of the same, the present Revision is not maintainable, under Section 115 of the Code of Civil Procedure.

In the above background, the issue that arises for consideration of this Court is “whether the impugned order passed by the learned Principal Junior Civil Judge, Kadiri, warrants any interference of this Court, under Section 115 of Code of Civil Procedure”?

The suit instituted by the respondent herein before the learned Junior Civil Judge was decreed on 15.12.2006. Seeking enforcement of the said decree, the respondent herein filed E.P.No.98 of 2015, by way of arrest under the provisions of Order XXI Rule 37 of Code of Civil Procedure. Resisting the said E.P, the petitioner herein filed counter, stating that he paid entire decretal amount to the decree holder and the decree holder never demanded him for payment of decretal amount, as alleged in the E.P. and he further contended that he paid the entire decretal amount in the presence of the elders and decree holder filed the present E.P only to harass him. Before executing Court, the decree holder examined himself as P.W1 and in order to substantiate his case, he filed Ex.A.1, 1-B namoona whereas the judgment debtor/petitioner examined himself as R.W.1 and also examined R.Ws. 2 to 4.

A perusal of the order passed by the Court below discloses, in clear and vivid terms, that the learned Judge considered Ex.A.1 document filed by Decree Holder to substantiate that the Judgment Debtor owns the properties. The learned Judge also recorded the finding that the evidence of P.W.1 corroborates with Ex.A1 document, which reveals that

judgment debtor has sufficient means to discharge the E.P. amount. On the evidence of R.W's 2 and 3, the Court below found categorically noted contradictions in the evidence of R.W's 2 and 3. Learned Principal Junior Civil Judge took note of the fact that the judgment debtor did not file any scrap of paper to show the discharge of E.P. amount. Eventually, the learned Principal Junior Civil Judge, by assigning cogent and convincing reasons, allowed the application filed by the decree holder. Another aspect which needs mention in this connection is that this Court while ordering notice on admission, on 15.06.2017 granted stay of further proceedings, including the arrest, subject to condition of the petitioner depositing half of the EP amount, within a period of four weeks and it is brought to the notice of this Court by the learned counsel that the petitioner herein did not comply the said condition also.

In view of the above reasons, this Court is not inclined to meddle with the reasoned order, passed by the learned Junior Civil Judge.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

Miscellaneous petitions pending consideration, if any, in the Civil Revision Petition shall stand closed in consequence.

A.V.SESHA SAI, J

28.07.2017
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