

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1811 OF 2017

O R D E R

O.S.No.150 of 1992 on the file of the learned District Munsif, Medchal, Ranga Reddy District, was decreed on 03.02.1994 perpetually restraining the defendants, their men, agents and persons claiming under them from interfering with the plaintiff's possession over the suit schedule property, an extent of Ac.5-00 guntas in Sy.No.417/1 and Ac.4-00 guntas in Sy.No.427 of Bomma Village, Shamirpet Mandal, Ranga Reddy District.

In the year 2017, the plaintiff sought to execute this decree against the second defendant in the suit and the legal representatives of the deceased first defendant, *vide* E.P.No.1 of 2017 filed before the learned Principal Junior Civil Judge, Medchal, Ranga Reddy District. He also moved E.A.No.1 of 2017 in the said E.P., under Section 146 CPC, for a declaration that respondents 3 to 6 therein were the legal representatives of the deceased first defendant in the suit. On 06.01.2017, the executing Court ordered the said E.A. The plaintiff also filed E.A.No.2 of 2017 in the said E.P. seeking police protection for himself and the suit schedule property. Notice having been ordered in the said E.A., respondents 3 to 6 therein, being the legal representatives of the deceased first defendant in the suit, entered appearance and filed their counter. They then filed E.A.No.11 of 2017 in E.A.No.1 of 2017 in E.P.No.1 of 2017 under Section 151 CPC to set aside the *ex parte* order dated 06.01.2017 passed in E.A.No.1 of 2017 so as to decide the same after hearing both parties and after considering the pleas raised by them in their counter. By order dated 21.03.2017, the executing Court dismissed the said E.A. with costs.

Be it noted that the order is wrongly shown as having been passed in E.A.No.11 of 2017 in E.A.No.2 of 2017 in E.P.No.1 of 2017. Aggrieved thereby, the petitioners in the said E.A., the legal representatives of the deceased first defendant in the suit/ respondents 3 to 6 in the E.P., filed this civil revision petition under Section 115 CPC.

Heard Sri Bodduluri Srinivasa Rao, learned counsel for the petitioners/applicants in the subject E.A., and Sri Polavarapu Srinivas, learned counsel on caveat for the first respondent/first respondent in the E.A./the decree holder in O.S.No.150 of 1992.

Sri Bodduluri Srinivasa Rao, learned counsel, would contend that the executing Court ought to have ordered notice to the petitioners in the first instance before ordering E.A.No.1 of 2017 in E.P.No.1 of 2017 as the execution proceedings were instituted well beyond two years after the passing of the decree. He would further contend that the executing Court failed to take note of the provisions of Order 21 Rule 22 CPC in this regard and therefore, the order under revision is liable to be set aside on this short ground. Learned counsel would assert that the petitioners have a statutory right to oppose the execution proceedings at the very threshold, i.e., when E.A.No.1 of 2017 in E.P.No.1 of 2017 was taken up for consideration.

Per contra, Sri Polavarapu Srinivas, learned counsel, would point out that Order 21 Rule 22 CPC only mandates notice being given to the person against whom execution is applied for, requiring him to show cause as to why the decree should not be executed against him, if the application for execution is made more than two years after the date of the decree. He would therefore contend that once this procedural requirement stands complied with, no prejudice was caused to the petitioners. Learned counsel would state that

ordering of E.A.No.1 of 2017 in E.P.No.1 of 2017 was only an innocuous step in terms of allowing the execution petition to be filed against the legal representatives of the deceased first defendant in O.S.No.150 of 1992 under Section 146 CPC.

At the outset, it may be noted that the first defendant in O.S.No.150 of 1992 expired and the petitioners were arrayed in the E.P. as his legal representatives, i.e., persons claiming through him. In **PRABHAKARA ADIGA V/s. GOWRI**¹, the Supreme Court pointed out that under Section 50(2) CPC, a decree for permanent injunction can be executed against the judgment-debtor or his legal representatives.

Section 146 CPC deals with proceedings by or against representatives and states to the effect that where any proceeding/application may be taken by or made against any person, then such proceeding/application may also be taken by or made against any person claiming under him. E.A.No.1 of 2017 in E.P.No.1 of 2017 was filed by the respondent/decree holder under this provision seeking a declaration that the petitioners herein, being respondents 3 to 6 in the said E.A., were the legal representatives of the deceased first defendant in the suit. This is not in dispute as the petitioners do not aver even now that they are not the legal representatives of the deceased first defendant in the suit. Perusal of the affidavit filed in support of E.A.No.11 of 2011 reflects that the deceased first defendant was none other than the grandfather of the applicants in the said E.A. Their contest in the E.P. was on the merits of the matter. They claimed that as they were not parties to O.S.No.150 of 1992, they were not bound by the decree passed therein long ago.

¹ 2017 (2) ALD 46 (SC)

It is no doubt open to the petitioners to contest the execution proceedings on the strength of the pleas urged by them but once they do not dispute the fact that they are the legal representatives of the first defendant in the suit, there is no tenable basis for them to seek setting aside of the order passed on that premise.

As regards the other argument of Sri Bodduluri Srinivasa Rao, learned counsel, Order 21 Rule 22(1) CPC, as modified in its application to the erstwhile State of Andhra Pradesh, i.e., the present States of Telangana and the Andhra Pradesh, states that where an application for execution is made more than two years after the date of the decree, the Court executing such decree shall issue notice to the person against whom execution is applied for, requiring him to show cause as to why the decree should not be executed against him. This embargo is not in absolute terms as is clear from Order 21 Rule 22(2) CPC, which postulates that nothing in sub-rule (1) shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing notice, if it considers, for reasons to be recorded, that issue of such notice would cause unreasonable delay or defeat the ends of justice. 'Process for execution' is dealt with in Order 21 Rule 24 CPC, which states that when the preliminary measures required by the foregoing rules have been taken, the Court may issue its process for execution of the decree and that every such process shall be sealed after completion of other requirements and delivered to the proper officer to be executed as provided thereunder. In effect, mere ordering of E.A.No.1 of 2017 in E.P.No.1 of 2017 under Section 146 CPC cannot be said to be part of the 'process in execution' of the decree as per Order 21 Rule 24 CPC.

Sri Bodduluri Srinivasa Rao, learned counsel, placed reliance on the following case law:

In **P.JAYANTHA RAO V/s. V.VENKATESWARLU²**, a learned Judge of this Court was dealing with a case where, in execution of perpetual injunction decree, the Court ordered detention of the judgment-debtors in civil prison apart from attaching their immovable properties. The perpetual injunction decree in that case was passed well before two years from the date of initiation of the execution proceedings but no notice was issued by the Court in terms of Order 21 Rule 22 CPC. In this context, the learned Judge held that in a matter relating to execution of a decree for permanent injunction, the Court should take care to see that all procedural formalities were followed but in that case, the order was passed straightaway without issuing any show cause notice in accordance with the provisions of Order 21 Rule 22 CPC. The order was accordingly set aside and the matter was remitted to the Court below for disposal afresh. This case is clearly distinguishable on facts as the decree in the said case was executed without issuing notice to the judgment-debtors under Order 21 Rule 22 CPC though the stipulated two year period had already expired by the date of initiation of the execution proceedings. That apart, the process in execution was straightaway issued by the Court in the said case without adhering to the procedural requirement under Order 21 Rule 22 CPC, unlike the present case where the petitioners were put on notice as soon as the respondent/decreed holder applied for police protection, a process in execution of the decree. This judgment is therefore of no assistance to the petitioners.

² 2002 (1) An.W.R. 200 (A.P.)

In ***FAIZADDI TALUQDAR V/s. REZIA BEGUM***³, a Division Bench of the Calcutta High Court affirmed the legal position that the representative of the deceased judgment-debtor must be called upon to show cause as to why the decree should not be executed against him and if no notice to this effect is served on such legal representative in accordance with Order 21 Rule 22(1) CPC, it would warrant interference. In the present case, ordering of the application under Section 146 CPC does not amount to a step in the process in execution and the petitioners were given due notice to show cause as to why the decree in O.S.No.150 of 1992 should not be executed against them. The legal procedure was therefore adhered to.

In ***RANI BRAJOBALA DEBI V/s. THAKUR MADHUSUDAN SINGH***⁴, a Division Bench of the Patna High Court pointed out that Order 21 Rule 22(2) CPC provides that the Court may decide not to issue a notice only if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or defeat the ends of justice. In that case, the Division Bench found that the executing Court had not opined that issue of notice would cause unreasonable delay or defeat the ends of justice. In the present case, the executing Court did not dispense with the notice under Order 21 Rule 22(1) CPC as the petitioners were put on notice when the respondent sought police protection in E.A.No.2 of 2017 in E.P.No.1 of 2017 in execution of the decree passed in O.S.No.150 of 1992.

In the light of the aforestated legal position, Order 21 Rule 22(1) CPC had no application to E.A.No.1 of 2017 in E.P.No.1 of 2017 filed by the plaintiff in O.S.No.150 of 1992, under Section 146 CPC. The contention of Sri Bodduluri Srinivasa Rao, learned counsel, that

³ AIR (29) 1942 CALCUTTA 436

⁴ AIR 1938 PATNA 162

even before the E.P. was numbered the petitioners herein should have been put on notice does not hold merit as all that Order 21 Rule 22(1) CPC mandates is that a person against whom execution is sought must be given an opportunity to show cause as to why the decree should not be executed against him. Therefore, at the stage of entertainment of the E.P. or taking procedural steps for entertaining the E.P., it is not necessary for the executing Court to put the person against whom execution is sought on notice. The endeavour of the petitioners to seek recall of the order passed by the executing Court in E.A.No.1 of 2017 (wrongly shown as E.A.No.2 of 2017) in E.P.No.1 of 2017 was therefore utterly misconceived. This Court finds no ground made out to interfere with the well reasoned and cogent order passed by the executing Court disallowing the said E.A.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

28th APRIL, 2017

PGS

SANJAY KUMAR, J