

THE HONOURABLE SRI JUSTICE M. S. RAMACHANDRA RAO

CIVIL REVISION PETITION NO.5227 OF 2016

ORDER:

Heard Sri C.C.S.Sastry, learned counsel for the petitioners and Sri K.Chidambaram, learned counsel for respondent.

2. This Revision petition is filed assailing the order dated 29.09.2016, in E.P.No.231 of 2014 in O.S.No.577 of 2007 on the file of the Additional Senior Civil Judge, Eluru.

3. The petitioners are judgment debtors in O.S.No.577 of 2007.

4. Though the said suit was initially dismissed by the Additional Senior Civil Judge, Eluru on 16.09.2010, the respondent preferred A.S.No.20 of 2011 on the file of VII Additional District Judge, West Godavari District and the appeal was allowed on 12.08.2013.

5. The petitioners preferred S.A.No.1 of 2014 before this Court.

6. In S.A.M.P.No.1 of 2014, this Court directed stay on condition of depositing Rs.1 lakh by 31.03.2014, but the petitioners did not deposit the same and filed another petition for seeking time. Though the said petition has been listed, no order has been granted in favour of the petitioners.

7. In the meantime, the respondent filed E.P.No.231 of 2014 for execution of decree for recovery of amount, by way of arrest and detention of the petitioners in civil prison.

8. The Court below held by order dated 29.09.2016 that the first petitioner had Acs.6.99 cents and the second petitioner had Acs.7.2 cents of land and they were having means to satisfy the decree, but they had intentionally failed to discharge the E.P. amount, it directed their arrest and detention in civil prison.

9. On 28.10.2016, this Court issued notice before admission and granted interim stay of arrest of the petitioners subject to payment of half of the E.P. amount plus costs, within four weeks. After service of notice, Sri K.Chidambaram appeared for the respondent.

10. Learned counsel for the petitioners contended that the Second Appeal challenging the decree obtained by the respondent is pending before this Court; that the Second Appeal was admitted, but interim order passed therein could not be complied with by the petitioners and therefore this Revision be admitted and the interim stay granted in favour of the petitioners be maintained till disposal of the Second Appeal.

11. Learned counsel for the respondent on the other hand contended that in the absence of any stay of execution of the decree obtained by the respondent, the petitioners avoided satisfying the decree granted by the first appellate Court and in view of the findings of the Court below that the petitioner had means to satisfy the decree, but were avoiding to do so, no indulgence can be shown to the petitioners.

12. Admittedly, the evidence on record establishes that the petitioners have means to satisfy the decree obtained by the respondent, but had not chosen to satisfy the same inspite of the fact that there is no stay subsisting in their favour in S.A.No.1 of 2014 pending before this Court. Therefore, the petitioners cannot be allowed to contend that till the Second Appeal is decided, the execution of the decree by way of their arrest has to be stayed.

13. In that view of the matter, the petitioners are granted three months time from today to satisfy the decree obtained by the respondent. Any such satisfaction of the decree would be subject to the result in S.A.No.1 of 2014. The amount already deposited pursuant to the interim order passed by this Court on 28.10.2016 is permitted to be withdrawn by the respondent without furnishing any security.

14. With the above direction, the C.R.P. is disposed of. It is made clear that if the balance of decretal amount, E.P. amount and costs are not deposited within time stipulated above, the Court below is at liberty to enforce its order. No costs.

Miscellaneous Petitions, if any, pending in this revision, shall stand dismissed.

M. S. RAMACHANDRA RAO, J

Date: 03-03-2017
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