

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Civil Revision Petition No. 5670 OF 2016

ORDER:

This Civil Revision Petition is filed against order dated 22.09.2016 in E.P.No.06 of 2016 in O.S.No.35 of 2007, wherein the Court below dismissed the Execution Petition filed by the petitioner on the ground that the Second Appeal i.e., S.A.No.1414 of 2012 is pending on the file of this Court.

Heard learned counsel for the petitioner and learned counsel for the respondent.

Learned counsel for the petitioner submits that the suit O.S.No.35 of 2007 is decreed in favour of the petitioner. Against the decree and judgment in OS No.35 of 2007, first appeal i.e., A.S.No.30 of 2010 was preferred by the respondent/judgment debtor and same was also dismissed on 15.06.2012. Against the same, the judgment debtor preferred S.A.No.1414 of 2012 on the file of this Court wherein this Court granted interim stay and subsequently, the same was modified with the condition to deposit rent at the rate of Rs.750/- by the judgment debtor. He further submits that even the condition of payment of rent not complied by the judgment debtor. He submits that when the decree-holder-petitioner filed the EP No.6 of 2016, the Executing Court held that the respondent has not complied with the condition of payment of rent though stay is granted in the Second Appeal. He further submits that the executing Court erroneously dismissed the EP on the ground of pendency of Second Appeal.

In the instant case, it is to be seen that in para 12 of the order in the E.P No.6 of 2016, the Executing Court clearly observed that the judgment debtor-respondent only paid amounts @ Rs.750/- per month from March, 2013 to August, 2013 only and from September, 2013 onwards, he failed to deposit the rents in the Court till date and also found that when once the judgment-debtor becomes defaulter in payment rent, interim stay granted in Second Appeal automatically stands vacated. Though interim stay was granted by this Court in the Second Appeal on condition of payment of rent @ Rs.750/- per month with default clause, the said condition was not complied with by the respondent-judgment debtor. When once the condition is not complied with, stay is automatically vacated for non compliance of conditions, mere pendency of Second Appeal before this Court cannot be ground for not executing the decree passed in O.S.No.35 of 2007.

In view of above facts and circumstances, the order of the Executing Court in EP No.6 of 2016 dated 22.09.2016 is set aside and the Execution Petition is restored to file. The Executing Court is directed to dispose of the Execution Petition, in accordance with law within a period of three months from the date of receipt of a copy of this order.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this Civil Revision Petition shall stands closed.

A.RAJASHEKER REDDY,J

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