

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 4777 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India questioning the order dated 15-07-2016 in I.A.No. 739 of 2015 in O.S.No. 388 of 2015 on the file of the Court of VII Additional District and Sessions Judge, Vijayawada (for short, 'the Court below'), whereby the Court below dismissed the petition filed by the petitioners under Section 151 of the Code of Civil Procedure (for short, 'C.P.C.') to grant stay of execution proceedings in E.P.No. 2 of 2014 in O.P.No. 238 of 2013 on the file of the learned Family Court Judge – cum – IV Additional District Judge, Vijayawada (for short, 'the executing Court'), till disposal of the main suit.

The petitioners filed O.S.No. 388 of 2015 to declare that petitioner No. 1 is the owner of the property and to declare that the decree in O.P.No. 238 of 2013 on the file of the executing Court is not binding on them and for other reliefs. The suit is pending. The petitioners filed the present petition under Section 151 of C.P.C. to grant stay of execution in E.P.No. 2 of 2014 in O.P.No. 238 of 2013 on the file of the executing Court.

The respondents filed counter questioning the very maintainability of the petition itself besides raising several other contentions.

Upon hearing argument of both counsel, the Court below dismissed the application holding that the petitioners failed to file an application in E.P.No. 2 of 2014 in O.P.No. 238 of 2013 on the file of the executing Court and therefore the present application is not maintainable.

During hearing, at the stage of admission, Ms. K.V.Vani, learned counsel for the petitioners, drawn the attention of this Court to several documents

produced before the Court below while submitting that these petitioners are not the parties to O.P.No. 238 of 2013 in which the respondents obtained an order for maintenance before the executing Court, the original respondent in O.P.No. 238 of 2013 died and all his legal-heirs were not brought on record but the persons who are unconcerned with the property were impleaded, thereby the respondents are not entitled to proceed with the execution of the decree in O.P.No. 238 of 2013 on the file of the executing Court, Section 47 of C.P.C. cannot be invoked in the present fact situation and thereby sought for stay of all further proceedings.

Admittedly, the respondents obtained decree in O.P.No. 238 of 2013 for payment of maintenance and the said order became final. To realize the amount under the decree in O.P.No. 238 of 2013, the respondents filed E.P.No. 2 of 2014 to attach the property and sell the same by following necessary procedure under Order 21 Rule 41 of C.P.C. During hearing, this Court took an objection about maintainability of the petition under Section 151 of C.P.C. to stay the execution proceedings in E.P.No. 2 of 2014 in O.P.No. 238 of 2013. Learned counsel for the petitioners would contend that when Section 47 of C.P.C. cannot be invoked, the petitioners are entitled to claim relief under Section 151 of C.P.C. There are only three provisions which deal with grant of stay, one is Section 10 of C.P.C.; second one is Order 41 Rule 5 of C.P.C. and third one is Section 115 of C.P.C. Order 39 Rules 1 and 2 of C.P.C. deals with grant of temporary injunction during pendency of the proceedings. In view of the bar under Section 41 (a) of the Specific Relief Act, 1963 (for short, '1963 Act'), to circumvent the law, the present petition is filed under Section 151 of C.P.C. which is impermissible under law. This Court in a similar situation in ***M.Rajagopal Reddy Vs. State Bank of India***¹, where the parties filed an application circumventing

¹ 2006 (3) ALD 469

the provisions, held that the parties cannot be allowed to resort to Section 151 or Section 47 of C.P.C. to circumvent the regular provision of Order 21 Rule 90 of C.P.C. In the facts of the above judgment, auction of the property was held. Instead of filing an application under Order 21 Rule 90 of C.P.C., the petitioners filed petition under Section 151 and 47 of C.P.C. Therefore, the present application under Section 151 of C.P.C. is only to circumvent the law, more particularly the bar under Section 41 (a) of 1963 Act. Apart from that, the petitioners are not the parties to the O.P. and E.P. and they filed suit for various reliefs including annulment of the decree in O.P.No. 238 of 2013 by granting declaration and the suit is pending before the Court below. When the property was attached under Order 21 Rule 43 of C.P.C. and proceeding further for sale of the property after following necessary procedure, the remedy open to the petitioners, who set up an independent title to the property, is to file an application under Order 21 Rule 58 of C.P.C. to raise attachment and in such case, they are entitled to stay all further proceedings but not in a suit for declaration that they are the owners of the property and to declare that the decree in O.P. is invalid *etc.,*.

As seen from the material on record, it is evident that this petition is filed only to circumvent the law to obtain an order to stall the entire proceedings in E.P. initiated by the respondents. If such order is passed granting stay by exercising inherent power under Section 151 of C.P.C., it would frustrate the very purpose of constituting Family Courts.

For grant of stay, normally the petitioners have to prove that they would sustain irreparable loss but there is no pleading in the petition that the petitioners would sustain irreparable loss. On the other hand, the claim of the petitioners is pending for adjudication and in such case, I am not inclined to grant stay of all further proceedings in E.P.No. 2 of 2014 in O.P.No. 238 of 2013 on the file the

executing Court though dismissal of the petition by the Court below is on other ground.

This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate Courts or the Tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge passed by the subordinate Courts or Tribunals within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress their jurisdictional limits but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India in the following circumstances:

- "a) *When the inferior court assumes jurisdiction erroneously in excess of power.*
- b) *When refused to exercise jurisdiction.*
- c) *When found an error of law **apparent** on the face of record.*
- d) *Violated principles of natural justice.*
- e) *Arbitrary or capricious exercise of authority or discretion.*
- f) *Arriving at a finding which is perverse or based on no material.*
- g) *A patent or flagrant error in procedure.*
- h) *Order resulting in manifest injustice.*
- i) *Error both on facts and law or even otherwise."*

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) *Where the only question involved is one of interpretation of deed;*
- b) *On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;*
- c) *To correct erroneous exercise of jurisdiction, as a Court of revision;*
- d) *To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;*

- e) *To correct an error of law, not being an error apparent on the face of the record;*
- f) *To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;*
- g) *The Court shall not interfere on a merely technical ground which would not advance substantial justice."*

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Courts and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised *suo motu*. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in ***State (N.C.T. Of Delhi) Vs. Navjot Sandhu@ Afsan Guru***² that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law declared by this Court, I am unable to exercise jurisdiction under Article 227 of the Constitution of India to interfere with the order under challenge. Consequently, the revision petition is liable to be dismissed.

The civil revision petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

Date: 29-06-2017.

JSK

M.SATYANARAYANA MURTHY, J.

² (34)2005 (3) ALT (CrI.) 125 (SC)