

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2557 of 2016  
and  
CRPMP(SR).No.23994 of 2016

COMMON ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful 1<sup>st</sup> defendant assailing the docket order, dated 24.03.2016, of the learned III Additional Junior Civil Judge, Ongole, passed in IA.No.95 of 2016 on OS.No.653 of 2010.

2. I have heard the submissions of Sri Sadu Rajeshwar Reddy, learned counsel for the petitioner, and of Sri P. Vishnuvardhan Reddy, learned counsel for the 1<sup>st</sup> respondent-plaintiff. I have perused the material record.

3. At the outset, it is to be noted that by the order impugned in this revision, the trial Court dismissed the afore-stated IA filed by the defendants for recalling of PW1 for cross-examination on behalf of the 1<sup>st</sup> defendant. Aggrieved thereof, the 1<sup>st</sup> defendant filed the revision petition.

4. On 06.06.2016, this Court ordered notice before admission and directed the CRP to be listed after four weeks. Subsequently, on 08.07.2016, the matter was directed to be listed in the next week along with USR.No.4120 of 2016. Later, on 22.07.2016, as there was no representation for the petitioner, the matter was directed to be posted after two weeks. Again, on 05.08.2016, as none appeared, the CRP was directed to be posted after three weeks. On, 14.10.2016, at request of the counsel for the petitioner, the matter was directed to be listed next week. On 17.09.2016, Sri P.Vishnuvardhan Reddy, entered appearance for the 1<sup>st</sup> respondent-plaintiff and sought time to file counter and the matter was directed to be posted after Dasara Vacation, 2016.

On 16.11.2016, at request, the matter was directed to be listed on 23.11.2016. On 23.11.2016, after matter is part heard a request is made for making further submissions and hence for continuation of hearing the matter was directed to be listed on 30.11.2016. Later, the matter was listed on 04.10.2017. On 04.10.2017, it is fairly stated by the counsel for the revision petitioner-1<sup>st</sup> defendant that the suit was decreed, on 22.07.2016, in favour of the plaintiff chit fund company. It is also submitted that CRPMP(SR).23994 of 2016 is filed seeking verbatim following relief: ‘..to set aside the recall petition i.e. order in IA.No.95/ 2016 in OS.No.653/ 2010 which was dismissed on 24.03.2016 along with the judgment and decree in OS.No.653/ 2010 dt.22.07.2016 on the file of the III Additional Junior Civil Judge, Ongole and direct the court below to reopen OS.No.653 of 2010 and give an opportunity to the 1<sup>st</sup> defendant to cross-examine PW1..’

5. In view of the afore-stated factual background and the disposal of the suit by the trial Court, this revision petition filed assailing a docket order in an interlocutory order has become infructuous. Hence, it is submitted by the learned counsel for the 1<sup>st</sup> respondent-plaintiff that no cause survives for adjudication in the CRP in view of the disposal of the suit in favour of the plaintiff and that the revision petition may be dismissed as infructuous. However, learned counsel for the revision petitoenr-1<sup>st</sup> defendant would submit that the trial Court disposed of the suit during the pendency of the revision and hence, such a judgment and decree in the suit are liable to be recalled and that the trial Court shall be directed to reopen the suit and afford an opportunity to the 1<sup>st</sup> defendant to cross examine PW1 and then dispose of the suit on merits.

6. The main contention of the learned counsel for the revision petitioner-1<sup>st</sup> defendant is that though no stay order staying all further proceedings in the

suit is granted by this Court in this revision, yet the trial Court ought not to have proceeded with the trial and disposal of the suit and ought to have adjourned the suit till the disposal of this revision petition. As rightly contended by the learned counsel for the 1<sup>st</sup> respondent-plaintiff, such an argument is misconceived and untenable. Be it noted that the challenge in the revision petition is to a docket order in an interlocutory application and by the said order the request of the defendants to recall PW1 for further cross examination was not granted by the trial Court. In this revision filed way back in the year 2016, no interim order of stay is granted and the revision petitioner-1<sup>st</sup> defendant also did not get ready for the hearing and disposal of the revision petition on its merit. When the revision petition was heard-in-part, on 23.11.2016, it was brought to the notice of the Court that the suit was already disposed of on, 22.07.2016, and that an application in CRPMPSR was filed before this Court, on 18.08.2016, and now it is being contended that though no stay orders staying all further proceedings in the suit before the trial Court is granted by this Court, the trial Court ought not to have disposed of the suit on its merit. The law is well settled that mere pendency of an appeal or a civil revision petition before this Court shall not operate as either stay of execution of a decree or the proceedings of the suit, as the case may be. Unless this Court in the pending civil revision petition grants an order of stay staying all proceedings in the suit before the trial Court, the trial Court shall proceed with the further proceedings in the suit in accordance with the procedure established by law. In the case on hand, since no stay order staying all further proceedings in the suit before the trial Court is granted by this Court, the trial Court rightly proceeded with the further proceedings in the suit and eventually decreed the suit in favour of the plaintiff. In that view of the matter, the only remedy now available to the revision petitioner is to prefer an appeal if he so desires and is so advised but in the pending revision petition he

cannot seek the judgment and decree passed in the suit to be set aside by filing a miscellaneous petition.

7. On the above analysis, this Court finds that the unregistered MP requesting to recall the judgment and decree is wholly misconceived and is liable to be dismissed and the revision petition is also liable to be dismissed as no cause survives for adjudication in view of the fact that the trial Court already disposed of the suit.

8. Accordingly, the Civil Revision Petition is dismissed as infructuous and CRPMP(SR).No.23994 of 2016 is dismissed being devoid of merit.

Miscellaneous petitions, pending if any, in the CRP shall also stand dismissed.

23.10.2017  
VJI



M. SEETHARAMA MURTI, J