

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.4859 of 2017

ORDER:

Aggrieved by an order passed by the Executing Court refusing to allow payment of the decretal amount in instalments, a judgment debtor has come up with the above revision.

2. Heard Mr. Ch. Ramesh Babu, learned counsel for the revision petitioner and Mr. K.V.L. Narasimha Rao, learned counsel for the respondent.

3. The petitioner suffered a money decree and the decree attained finality. The respondent filed an Execution Petition in which the petitioner/judgment debtor filed an application in E.A.No.62 of 2017 seeking permission to pay the decretal amount in monthly instalments. The said application was dismissed by the Executing Court on the ground that under Order XX Rule 11 (2) of the Code of Civil Procedure, an application for payment of the decretal amount in instalments should be filed within 30 days from the date of the decree. The Executing Court opined that the purpose of prescribing a limitation of 30 days under Article 126 of the Limitation Act, 1963 will stand defeated if the application is entertained beyond 30 days. Therefore, the Executing Court dismissed the prayer for payment by instalments forcing the judgment debtor to come up with the above revision.

4. I think the trial Court has misread the provisions of Order XX Rule 11 (2) C.P.C. Order XX Rule 11 (1) provides that wherever a decree is for payment of money, the Court may incorporate in the

decree itself, the provision for payment of the decree amount by instalments with or without interest or for the postponement of the payment of the decretal amount. Sub-Rule (2) of Rule 11 of Order XX empowers the Court, after passing any decree, to order the payment by instalments, on an application filed by the judgment debtor and with the consent of the decree holder.

5. While sub-rule (1) of Rule 11 of Order XX would come into play at the stage of passing of the decree, sub-rule (2) of Rule 11 would come into play immediately after the decree. Both these Rules do not operate at the stage of execution.

6. In the case on hand, the petitioner made a request before the Executing Court. Therefore, the question of applying Order XX Rule 11 at the stage of execution does not arise.

7. The powers of the Executing Court are very wide. While the power of the Court, which passed the decree, is circumscribed under Order XX Rule 11 (2), by a prescription that the facility of payment by instalments can be granted only with the consent of the decree holder, the power of the Executing Court is not so limited.

8. In fact, the Executing Court has the power under Order XXI Rule 26 CPC even to stay the execution, upon sufficient cause being shown.

9. In fact, among the several modes of execution, prescribed under Order XXI, attachment of salary and order against garnishee are notable. Whenever an attachment of salary is made in execution of a decree, the payment comes not in a lump sum, but only in instalments. Therefore, there is an inherent power for the Executing

Court to accept the payment by instalments provided the amount offered is not such a paltry amount that would defeat the very decree.

10. In the case on hand, I ordered notice on 19-09-2017 and granted stay on condition that the petitioner deposits Rs.50,000/-, on 21-09-2017 when the E.P. was posted for hearing. This order has been complied with and the petitioner is prepared to pay the amount in instalments. Therefore, I am of the considered view that the revision deserves to be allowed.

11. Accordingly, the Civil Revision Petition is allowed, the order of the trial Court is set aside and the application made by the petitioner for payment of the decree amount in instalments, will stand allowed. Since the petitioner has made one payment in September 2017, the first of the instalments shall be paid on or before 10-01-2018 and the same shall be followed by payments made on or before 10th day of every succeeding English calendar month. If the petitioner commits default in making payment for two consecutive instalments, the facility of payment by instalments will stand withdrawn and the respondent may proceed further with the execution.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 29-12-2017

Ksn