

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4267 of 2016

ORDER:

This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, challenging the order, dated 19-08-2016 passed in E.A.No.212 of 2016 in E.P.No.405 of 2016 by the II Additional District Judge, Ranga Reddy District, granting stay of execution under Order XXI Rule 26 read with 151 of Code of Civil Procedure during the pendency of petition filed under Order IX Rule 13 of Code of Civil Procedure subject to deposit of 1/4th of decretal amount and costs.

The petitioner filed a petition to set aside the *ex parte* decree with delay condonation petition in I.A.Nos.1368 and 1369 of 2016 and the said applications are pending before the trial Court. Since the execution proceedings are initiated the petitioner filed E.A.No.212 of 2016 under Order XXI Rule 26 read with 151 of Code of Civil Procedure to grant stay on the ground that petitions are pending before the original Court.

The respondents opposed the petitions on various grounds mainly on the ground that the petitioner remained *ex parte* on two occasions and got it set aside and again suffered an *ex parte* decree and filed petition at a belated stage along with the delay condonation petition under Section 5 of

Limitation Act. But the contention of the petitioner is that the petitions are pending still with the trial Court and counters are not yet filed though the petitions are of the year '2016', therefore, prayed to set aside the impugned order since the condition imposed by the trial Court is onerous.

A similar question came up before this Court in **V. Divakara Rao v. V. Srinivasa Rao**¹, wherein this Court directed to deposit Rs.25,000/- i.e., 1/4th of the decretal amount together with costs but the finding of this Court is not law declared. However, taking into consideration the conduct of the petitioner remaining *ex parte* twice and filing petitions to set aside and again suffered *ex parte* decree and filing petitions one after another, this Court deems it appropriate to grant stay, directing the petitioner to deposit 15% of the decretal amount together with suit costs within a period of four (4) weeks from today.

Accordingly, the Civil Revision Petition is disposed of, modifying interim stay of order, dated 19-08-2016 passed in E.A.No.212 of 2016 in E.P.No.405 of 2016 by the II Additional District Judge, Ranga Reddy District, till the disposal of I.As. in O.S.No.806 of 2008, subject to deposit of 15% of the decretal amount together with suit costs, within a period of four (4) weeks from today. In the event of failure to comply

¹ (2004) Supre Court (AP) 611

with the direction, this order automatically stands cancelled.

There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

July 05, 2017

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