

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.2537 and 2872 of 2016

COMMON ORDER:

The genesis of these two revisions is the decree, dated 28.08.2014, in OS.no.201 of 1999 on the file of the Court of the learned Principal Senior Civil Judge, Ranga Reddy District, granted pursuant to a common judgment, dated 28.08.2014, in OS.nos.584 of 1999, 552 of 1999 and OS.No.201 of 1999 passed by the said Court. As no appeal has been preferred against the decree in the said suit, the findings in the said common judgment insofar as they related to decreeing the said suit and the decree in the said suit OS.No.201 of 1999 became final.

2. However, it is apposite to mention that some of the unsuccessful plaintiffs in OS.no.584 of 1999 preferred A.S.No.272 of 2014 against the decree dismissing the said suit OS.no.584 of 1999; that appeal was dismissed by the learned XVI Additional District Judge, Malkajgiri, by decree and judgment dated 07.12.2015. A second appeal was filed assailing the decree and judgment in the said first appeal suit.

3. Be that as it may, the decree in O.S. No. 201 of 1999, which is the subject matter of this execution petition, has become final is not in dispute.

4. The plaintiff/ DHr in OS.No.201 of 1999 filed the subject E.P.No.82 of 2015 seeking the following relief:

‘Therefore, this Hon’ble Court may be pleased to pass orders directing the Cyberabad police authorities viz: SHO-Dundigal, Police Station, ACP Petbasheerabad Division and DCP Balanagar Zone to grant police protection to the members of the Petitioner society, against the defendants/respondents/JDr’s and their agents, persons, claiming through them from interfering with the petitioner society members’ peaceful possession to the schedule property for safeguarding the same in the interest of justice.’ [Reproduced verbatim]

4.1 In the array of respondents/ JDrs in the Execution Petition, not only the defendants in OS no.201 of 1999, who suffered the decree in the said suit, but also some other respondents, who are the unsuccessful parties in the other two suits, which were also disposed of by common judgment, are also arraigned. In-fact, in the Execution Petition, in the column 'against whom to be executed', it is mentioned as JDrs.

4.2. The Execution Petition was resisted by the respondents/ JDrs 23 to 25, 29 to 31 and 33 by filing a counter.

4.3. During the course of enquiry before the Court of execution, the Secretary of the DHr Society was examined as PW1 and on behalf of the contesting respondents, Talari Dasarth (JDr.no.33) and two others were examined as RWs1 to 3. Exhibits P1 to P7 were marked on the side of the DHr Society; no documents were marked on the side of the contesting respondents.

4.4. By order dated 11.03.2016, the Court of execution allowed the Execution Petition and ordered issuance of arrest warrant. The last (incomplete) sentence of the said order reads as – 'In the result, petition is allowed issue arrest warrant by'.

5. The DHr Society also filed an Execution Application in E.A.No.40 of 2015 under Section 151 of the Code of the Civil Procedure, 1908, requesting to grant the same relief of police aid. The relief claimed in the said EA reads thus:

'..Hon'ble Court may be pleased to pass orders directing the Cyberabad police authorities viz: SHO-Dundigal, Police Station, ACP Petbasheerabad Division and DCP Balangar Zone to grant police protection to the members of the Petitioner society, against the defendants/respondents/JDrs and their agents, persons, claiming through them from interfering with the petitioner society members' peaceful possession to the petition schedule property for safeguarding the same pending disposal of the main EP in the interests of justice.' [Reproduced verbatim]

That execution application was also resisted by the JDr.no.33 by filing a counter affidavit. It appears that no oral and documentary evidence was adduced at the time of enquiry into the said EA. However, the Court of execution, on merits and by order dated 11.03.2016, allowed the Execution Application and directed the SHO, Dundigal, to grant police aid to the members of the petitioner Society. The operative portion of the said order verbatim reads as under:

In the result, petition is allowed directing the SHO Dundigal to grant police aid to the petitioner's society members as the judgment debtors intentionally violating the court orders in OS.no.201 of 1999.

6. Aggrieved of the afore-sated two separate orders passed by the Court of execution; one in the Execution Petition and the other in the Execution Application, the respondents 23, 24, 25, 29, 31 and 33 preferred these two revisions.

7. I have heard the submissions of *Sri A. Venkatesh*, learned counsel appearing for the revision petitioners/JDr.s and of *Sri U. Muralidhar Rao*, learned counsel appearing for the sole respondent/DHr. I have perused the material record.

8. In the considered view of this Court, these revisions need not detain this Court for long as in the Execution Petition, as already noted, the main relief claimed itself is to grant police aid whereas the Court of execution ordered arrest and issuance of arrest warrant, without specifying against which of the respondents warrants of arrest are to be issued. From the Execution Petition, it is not clear as to on account of overt acts of which of the respondents/JDr.s, the relief of police aid was sought. In the Execution Petition in the column 'against whom to be executed', it is stated that the EP is to be proceeded against the JDr.s. If the said statement is to be taken literally, it shall be taken that the order of police aid was sought and granted against the

defendants/ JDrs in OS no.201 of 1999 but not others. However, if it is the case of the DHr Society that the defendants/ JDrs in OS no.201 of 1999 are being assisted by the other respondents, who are not JDrs, then it is for the DHr to urge necessary pleadings and adduce evidence for obtaining police aid. In the facts and circumstances, the executing Court ought not to have passed an order of arrest in the Execution Petition, when the relief sought is 'police aid'. Further, the order in the Execution Application whereby police aid was granted is also not specific as to under what circumstances and against acts of which of the JDrs-respondents, the police aid was sought and granted. When the executing Court is granting police aid, it ought to have passed a detailed order stating acts of which of the respondents/ JDrs had necessitated the grant of police aid. That was not done.

9. On the above analysis and in the light of the peculiar facts and circumstances of the case, this Court is of the considered view that both the matters require a fresh consideration by the Court of execution.

10. In the result, the Civil Revision Petitions are allowed and the orders impugned in the two revisions are set aside. As a sequel, E.P.No.82 of 2015 and E.A.No.40 of 2015 filed in the said EP are remitted to the Court of execution for disposal afresh in accordance with the procedure established by law. It is made clear that if the parties choose to adduce any further evidence, the Court of execution shall give them an opportunity so to do, before disposing of the matters.

Miscellaneous petitions, pending if any, in these revisions shall stand closed. There shall be no order as to costs.

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M. SEETHARAMA MURTI, J

23.02.2017.  
vj|