

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6446 of 2017

ORDER:

Heard learned counsel for the petitioner. In spite of service of notice, there is no representation on behalf of the respondents.

Assailing the order dated 04.09.2017, passed in F.D.I.A.No.167 of 2010 in O.S.No.455 of 2003, by Principal Senior Civil Judge, Kakinada, the present Civil Revision Petition came to be filed under Section 115 of Civil Procedure Code.

The petitioner is aggrieved by the order under challenge, on the ground that though no stay is pending as on today in the proceedings which are pending before this Court, the trial Court is not proceeding further with the final hearing of the case.

It would be useful to refer to paragraph Nos.4, 5 and 6 of the impugned order, which reads as under:

“4. A glance at the present petition F.D.I.A.No.167 of 2010, it was filed on 02.11.2009. Obviously, it is evident from the order referred to above by the date of filing of the present petition stay was not pending and was continued till passing of the aforementioned order dated 12.12.2011. Thereby, this Court has entertained the present petition.

Further more, it is clear from the order “it is open for the petitioner to file an application for passing of the final decree” that filing of the present petition and pendency of the same by the date of passing of the aforementioned order 12.12.2011 was not brought to the notice of the Hon'ble High Court.

5. On verification of Hon'ble High Court website with reference to A.S.No.341 of 2010, it is known that the matter is pending on the file of Hon'ble High Court.

6. Having regard to the facts and circumstances, it is inevitable to hold that the present petition could be entertained when interim stay of all further proceedings in the suit was pending. In that view, there is no cause of action for entertaining the present petition and the proceedings that were taken up during that relevant period become nullity. Consequently, the petition is deserved to be dismissed.

In the result, petition is dismissed.”

Challenging the same, the present revision came to be filed.

As seen from the material papers filed by the counsel, on 28.04.2010, in A.S.M.P.No.988 of 2010 in A.S.No.341 of 2010, this Court granted interim stay of passing of final decree alone. Vacate stay application came to be filed vide A.S.M.P.No.1504 of 2010 in A.S.M.P.No.988 of 2010 in A.S.No.341 of 2010, wherein another Division Bench of this Court vide its order dated 16.08.2010, passed the following order:

“The present petition is filed seeking to vacate the interim order dated 28.04.2010, passed in A.S.M.P.No.988 of 2010.

The interim order that was passed was staying of passing of final decree alone. Therefore, in the facts and circumstances of the case, the interim order dated 28.04.2010 is modified making the interim stay absolute subject to the condition of the petitioner depositing costs within a period of four weeks from today and on such deposit, the respondents are permitted to withdraw the same.”

Since the order was not complied with, the petitioner herein filed A.S.M.P.No.2583 of 2011 in A.S.M.P.No.1504 of 2010 in A.S.M.P.No.988 of 2010 in A.S.No.341 of 2010, wherein this Court, vide its order dated 12.12.2011, passed the following order:

“This application is filed to vacate the conditional modified interim order dated 16.08.2010 granted in A.S.M.P.No.1504 of 2010 in A.S.M.P.No.988 of 2010 in the above appeal.

It is stated that the petitioner herein is the plaintiff who filed the suit for partition and the said suit was decreed. Aggrieved by the same, the defendants 1 to 3 filed the appeal and this Court granted interim stay of all further proceedings in the suit by order dated 28.04.2010, and, thereafter, on the application filed by the petitioner herein seeking to vacate the order dated 16.08.2011, it was made absolute, however, on the respondents/ defendants depositing costs within a period of four weeks and on such deposit, the plaintiff was permitted to withdraw the same.

It is stated that the costs have not been deposited. Therefore, this application is filed seeking to vacate the modified interim order.

The petitioner herein filed this application on 07.09.2011 stating that the costs have not been paid and the conditional order has not been complied with. For verification as to the compliance of the conditional order with the learned counsel for the respondents, the matter was adjourned from 08.12.2011 till today. Learned counsel for the respondents submits that he was unable to contact the respondents and he has no communication.

Having regard to the facts and circumstances of the case, as there is no proof of compliance of the conditional order, if the costs are found to be not deposited before the Court below, the interim stay stands vacated and it is open for the petitioner to file an application for passing of the final decree.”

Learned counsel for the petitioner would submit that since the conditional orders passed by this Court was not complied with, the findings given by the trial Court in the impugned order are illegal, improper and incorrect. According to him, when once the interim order is not complied with, the stay granted gets vacated and the respondents have no other option except to proceed with the final decree proceedings. It is stated that mere pendency of the appeal does not itself is sufficient, unless an order is passed in the interim application made.

From the material placed by learned counsel for the petitioner, it appears that initially there was a stay of final decree only which was made absolute, subject to certain conditions. Since the conditions imposed by this Court, were not complied with, another order came to be passed in the year 2011, giving liberty to the petitioner to file an application for passing the final decree. In view of the said order, an application came to be filed for passing of final decree, which came to be rejected for the reasons stated above.

But, the impugned order does not anywhere indicate as to whether interim order passed by this Court, with regard to payment of costs, was deposited or not.

Having regard to the above, CRP is disposed of, directing the trial Court to proceed with the final decree proceeding, if the interim order of depositing costs is not complied with and pass order in accordance with law, as early as possible. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

22.12.2017
vnb

C. PRAVEEN KUMAR, J