

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
WEDNESDAY, THE TWELFTH DAY OF DECEMBER,
TWO THOUSAND AND EIGHTEEN

: PRESENT :

THE HONOURABLE DR. JUSTICE M. SEETHARAMA MURTI

A.S.M.P No. 2617 of 2017

And

I.A.No. 1 of 2018

IN

AS No. 323 OF 2017

Between:-

Borra Srinivasa Rao S/o. Bhujangalah.

...Petitioner/Defendant
(Appellant in A.S.No. 323 of 2017
on the file of High Court)

AND

Mudraboina Gopi Raju, S/o Venkateswarlu, R/o Chowdavaram Sivaru, Junam Chundurur
Village, Guntur Rural Mandal, Guntur District.

...Respondent/Plaintiff
(Respondent in-do-)

A.S.M.P.No. 2617 of 2017 :-

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the judgment and decree passed in OS.no. 318 of 2015 on the file of the III Additional District Judge, Guntur dt.17/01/2017 pending disposal of AS No. 323 of 2017, on the file of the High Court.

I.A.No. 1 of 2018 :-

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to modify the orders passed in A.S.M.P.No. 2617 of 2017 in A.S.No. 323 of 2017 dated 17-04-2018 on the file of this Hon'ble High Court instead of 50% to the costs imposed by the court below since the property under attachment.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of the High Court order dated 17-04-2018 in A.S.M.P.No. 2617 of 2017 and upon hearing the arguments of Sri Challa Ajay Kumar, Advocate for the Petitioner and of Sri L. Dayakar Reddy, Advocate for respondent, the Court made the following

ORDER :-

"A.S.M.P.No.2617 of 2017 is filed by the defendant/appellant/petitioner requesting to grant interim stay of execution of the decree for money, which is impugned in the appeal suit.

On 17.04.2018, this Court granted the following interim order in the said application.

"Heard.

There shall be Interim stay, as prayed for, until further orders, subject to condition of the petitioner depositing 1/4th of the decretal amount along with entire suit costs within 6 weeks from today, failing which the stay automatically ceases its force without further reference to this Court and the trial Court can proceed with the execution of the decree.

On such deposit, the respondent/ plaintiff is permitted to withdraw the same on furnishing security or undertaking in the event of allowing the appeal to restitue from the security."

Without complying with the condition imposed in the aforesaid order, the petitioner/appellant filed I.A.No.1 of 2018 seeking verbatim the following relief:

Contd.2...

"For the reasons stated in the accompanying affidavit, it is therefore prayed that the Hon'ble High Court may be pleased to modify the orders passed in A.S.M.P.No.2617 of 2017 in A.S.No.323 of 2017 dated 17.04.2018 on the file of this Hon'ble Court instead of 50% to the costs imposed by the Court below since the property under attachment, pending disposal of the appeal and pass such other order or orders as this Hon'ble Court deems fit and proper in the interest of justice."

I have heard the submissions of the learned counsel for the defendant/appellant/ petitioner ('the defendant', for brevity) and of the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity).

Learned counsel for the defendant submits as follows:

'This Court granted conditional stay orders on 17.04.2018. By the said orders, the defendant is required to deposit 1/4th of the decree debt along with suit costs within six weeks from that date (17.04.2018). Failing which the stay orders shall automatically cease to be in force. Now, the plaintiff (decree holder) filed an Execution Petition and it is at an advanced stage. Hence, I.A.No.1 of 2018 is filed for modification of the orders of stay. However, the prayer is wrongly worded in the said I.A. Hence, the present request of the defendant/appellant is that instead of modifying the stay orders, dated 17.04.2018, time may be extended for complying with the conditions imposed in the said stay orders and permission may be accorded for making the deposit of 1/4th of the decretal amount, in easy instalments, as the defendant is not in a position to make the deposit at one time. In view of the grounds urged in the memorandum of appeal, the defendant has got fair chance of success in the appeal suit.'

Per contra, the submissions of the learned counsel for the respondent/plaintiff are as follows:

'The suit was filed by the plaintiff against the defendant for recovery of money on the foot of a promissory note of the year 2013. After full fledged trial, the trial Court decreed the suit. The unsuccessful defendant filed the appeal suit. This Court, by showing consideration, granted interim stay subject to the condition of the depositing 1/4th of the decree debt within six weeks instead of directing him to deposit 50% of the decree debt as per normal practice. The said stay orders were granted in April, 2018. Six weeks time lapsed long time back. As the conditions imposed in the stay orders are not complied with, the stay orders stood vacated automatically. Since the decree debt is not paid, the plaintiff was constrained to file the Execution Petition. There are no grounds to either modify the stay orders or grant extension of time and permit the defendant to deposit 1/4th of the decree debt in instalments. Hence, I.A.No.1 of 2018 filed by the defendant may be dismissed declaring that the stay orders are not in force in view of non-compliance of the conditions imposed in the stay orders.'

I have given earnest consideration to the facts and submissions.

The unsuccessful defendant assailed a money decree in the appeal suit. Generally, while granting stay orders, this Court imposes condition to deposit 50% of the decree debt besides costs. But, having regard to the submissions of the learned counsel for the defendant, this Court directed the defendant to deposit 1/4th of the decretal debt along with suit costs within six weeks from 17.04.2018 and further observed in the stay orders that on failure to make deposits as indicated within the said time frame, the stay order shall stand vacated automatically without reference to the Court for any further orders. Having not deposited the 1/4th of the decree debt and also costs to the credit of the suit and having kept quiet till November, 2018, the defendant filed I.A.No.1 of 2018 for modification of the stay orders. He now seeks extension of time for complying with the conditions imposed in the stay orders and also seeks permission to deposit 1/4th of the decree debt in instalments.

During the course of hearing, it is stated that the defendant is a small contractor and that the plaintiff has already filed an E.P. and sought attachment of the property. Since already a reasonable condition to deposit 1/4th of the decree amount as well as costs is imposed, this Court is not inclined either to modify the stay orders or grant permission to the defendant to deposit 1/4th of the decree amount in instalments. However, to meet the ends of justice, this Court is of the considered view that some reasonable time can be granted to the defendant to make deposits as indicated in the stay orders dated 17.04.2018 passed in A.S.M.P.No.2617 of 2017.

In the result, while dismissing I.A.No.1 of 2018, the petitioner/defendant is granted a time of four weeks from the date of receipt of a copy of this order to deposit 1/4th of the decree debt along with the entire suit costs to the credit of the suit. On making such deposits, the stay orders shall stand revived and shall continue to be in force pending final disposal of the appeal suit. It is made clear that no further extension of time would be granted. On the defendant making the deposits as indicated in this order, the respondent/plaintiff is at liberty to withdraw the same without furnishing any security, however, by following the procedure established by law and without prejudice to the rights and contentions of both parties in the appeal suit. It is also made clear that if the defendant fails to make the deposits within the now extended time, the Executing Court shall be at liberty to proceed with further proceedings in the Execution Petition."

//TRUE COPY//

Sd/- A. SARASWATHI,
ASSISTANT REGISTRAR

for ASSISTANT REGISTRAR

To,

1. The III Additional District Judge, Guntur
2. One CC to SRI. CHALLA AJAY KUMAR Advocate [OPUC]
3. One CC to SRI. LAKKADI DAYAKER REDDY, Advocate [OPUC]
4. One spare copy

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HIGH COURT

MSRM.J

DATED : 12-12-2018

ORDER

A.S.M.P No. 2617 of 2017
And
I.A.No. 1 of 2018
IN
AS No. 323 OF 2017

DIRECTION



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