

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3273 OF 2016

ORDER:

This civil revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed by the petitioner/judgment debtor challenging the order dated 27.06.2016 in E.A.No.105 of 2016 in E.P. No.51 of 2012 in O.S. No.188 of 2009 passed by the Court of Principal Junior Civil Judge, Tiruvuru, whereby the executing court dismissed the petition filed under Rule 1-A (3) of Order VIII read with Section 151 of CPC.

The petition was filed by the petitioner/ judgment debtor to receive the documents and to mark them as exhibits on his behalf. The contents of the affidavit accompanying the petition are relevant to decide the real controversy between the parties. The judgment debtor obtained certified copies of registered Dakhal Deeds dated 02.02.2009 and 25.08.2008 and the Adangal copies and extract of 1-B Register through Mee-Seva centre and requested to receive the said documents and mark them as exhibits on his behalf.

The respondent/ decree holder did not file counter, but the executing court, upon perusing the petition, dismissed the petition on the ground that the petition is lack of bona fide and cause of delay is not explained by the petitioner.

Aggrieved thereby, the present revision is filed on the ground that dismissal of application to receive the documents, which are absolutely necessary to decide the real controversy, is an error committed by the executing court and failed to understand that the execution petition was remanded by the High Court by its order in CRP No.2152 of 2013 dated 29.04.2014, for conducting enquiry afresh, and thereafter, the decree holder filed a petition on

30.09.2015 to receive some documents, to prove that the judgment debtor own some properties and got means to pay the decree debt. On his examination, the petitioner herein filed the above petition to receive the documents with the contention that the properties are already alienated long prior to the suit and to prove that he has no means, but the executing court on erroneous appreciation of facts dismissed the petition and committed an error and thereby prayed to set aside the order passed by the executing Court allowing the E.A. and to direct the executing court to receive documents set out in the list filed along with the petition.

During hearing, Sri Ch.Venkateswarlu, learned counsel for the petitioner/judgment debtor, has contended that during pendency of the execution proceedings, no petition can be filed, as Section 141 CPC has no application and placed reliance on the judgment of the Apex Court in **Dokku Bhushayya v. Katragadda Ramakrishnayya and others**¹ in support of his contention. He also contended that filing of documents along with memo is sufficient, but the court insisted the petitioner to file an application along with the documents set out in the list of documents, and therefore, the order passed by the executing court on the ground that the petitioner did not satisfy the delay in filing the documents is erroneous and prayed to set aside the same.

Admittedly, the respondent/ Decree Holder filed E.P. No.51 of 2012 to execute the decree for recovery of an amount of Rs.1,15,527/- by arrest of the petitioner/judgment debtor. In the counter filed by the petitioner/ judgment debtor in the execution petition, it alleged that he does not own or possess any agricultural

¹ AIR 1962 SC 1886

lands, not getting any income and he was indebted heavily to third parties, he did not possess sufficient means to discharge the debt due under the decree and that he filed I.P. No.22 of 2002 as the liabilities far exceeds the value of the assets and prayed for dismissal of the petition. Despite raising such contention, the executing court passed an order dated 04.04.2013, which was challenged before this Court in CRP No.2152 of 2013 and this Court set aside the order and remanded the matter for *de nova* enquiry for examining the issue of Judgment debtor's liability and for arrest and detention in civil prison afresh. In pursuance of the order passed by this Court in CRP No.2152 of 2013 a fresh enquiry was taken up by the Principal Junior Civil Judge, Tiruvuru, Krishna District, and during enquiry the petitioner/judgment debtor filed the petition under Rule 1-A(3) of Order VIII of CPC, though the provision was made applicable to the defendants to file documents subsequent to filing of written statement. But Section 141 CPC deals with miscellaneous proceedings and according to it the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. He relied on the judgment of the Apex Court in **Dokku Bhushayya** case referred supra, wherein it was held that the application filed by the judgment debtor to set aside the sale is a proceeding in execution and, therefore, S.141 of the Code will not apply for two reasons, namely, (1) as execution proceedings were continuation of suit within the meaning of Order XXXII Rule 7 of the Code, as the Code provided specifically for suits, S.141 could not be invoked; and (2) as we have held, an application by a Judgment-debtor to set aside a sale is a proceeding in execution and therefore

Section 141, which applies only to original proceedings, does not apply to such proceedings.

In view of the judgment of the Full Bench referred supra, Section 141 CPC has no application to the execution proceedings. Therefore, the petitioner conveniently invoking jurisdiction filed the petition under Rule 1-A(3) of Order VIII CPC. When no other provision is available in CPC, the petitioner can invoke the jurisdiction of this Court under Section 151 of CPC. In the petition, he quoted the Section 151 CPC also. But the reason for dismissal of the application is that the petitioner did not satisfy the court the reason for delay in filing the petition. A bald allegation is made in the entire affidavit that he obtained certified copies of registered Dakhal Deeds dated 02.02.2009 and 25.08.2008 and the Adangal copies and extract of 1-B register through Mee-Seva centre. Even to receive documents set out in the list, whether it is subsequent or prior to filing of the execution petition, it is for the petitioner to raise such plea in the counter filed in the execution petition regarding gift deed or alienation etc. But the counter is totally silent, there was no reference about the transactions dated 02.02.2009 and 25.08.2008. Thus, there was absolutely no pleading in the counter filed in E.P. No.51 of 2012 and even to invoke the jurisdiction under Section 151 of CPC, the court has to exercise such discretion judiciously without adopting pedantic approach. Unless there is a factual foundation in the pleadings, whatever the documents produced before the Court cannot be received.

By invoking jurisdiction under Section 151 CPC, the counter bereft of any details like execution of gift dated 02.02.2009 and 25.08.2008. In the absence of any pleadings in the counter, no

amount of evidence be permitted to let in by the parties and in the absence of any reason for non-filing of those document of the year 2008-09, which is prior to filing of the suit and execution petition, failure to exercise jurisdiction of the court below under Section 151 CPC cannot be faulted. Therefore, this Court, while exercising power under Section 115 CPC, cannot interfere with such order, which is purely discretionary in nature, since the jurisdiction of this Court is limited. Under Section 115 CPC, this Court may call for the record of any case which has been decide by any court subordinate and in which no appeal lies thereto, and if such subordinate court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, but no such ground is raised in the entire revision to attract any clause under Section 115 of CPC.

In the absence of any such ground covered by Section 115 of CPC, it is difficult to exercise jurisdiction. Hence, I find no ground to interfere with the orders passed by the executing court and hence the revision is deserves to be dismissed.

In the result, the revision is dismissed. No costs.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:14.03.2018
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