

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1365 OF 2018

ORDER:

This petition is filed under Section 115 of C.P.C, challenging the order in E.P.No.288 of 2013 in O.S.No.199 of 2012 dated 09.11.2017 passed by the III Senior Civil Judge, City Civil Court, Secunderabad, ordering attachment under Order XXI rule 48 C.P.C to recover an amount of Rs.40,908/-, subject to Section 60 of C.P.C and send the amount to the credit of the above E.P.No.288 of 2013.

E.P.No.288 of 2013 is pending before the III Senior Civil Judge, City Civil Court at Secunderabad. The petitioner though did file counter and contesting the execution petition, but approached this Court straightaway without inviting any order from the Court below on contest. The main contention of the petitioner is that, the D.Hr collected excess amount due under the decree and produced certain documents before this court to show *prima facie* that the D.Hr collected amount in excess of the amount due under the decree.

When E.P.No.288 of 2013 is pending before the Trial Court and respondent filed counter, raising such contention, the executing court is competent to decide the amount due under the decree. But, this Court while exercising power under Section 115 C.P.C cannot undertake the exercise of calculating the amount and decide what is the exact amount due under the decree. Therefore, leaving it open to the petitioner to raise all his objections before the

Executing Court, the present civil revision petition is dismissed, as it would not fall within Clauses (a)/(b) or (c) of Section 115 C.P.C.

With the above observation, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.02.2018

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