

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

I.A.Nos.1 & 2 of 2018 In/And A.S.No.658 of 2014

COMMON JUDGMENT:

The genesis of this Appeal Suit filed by third party/claim petitioner is an award, dated 04.11.1999, passed in MVOP.no.196 of 1992, on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Vijayawada. During the course of execution of the said Award, when the claimant/awardee in the said original petition (MVOP), i.e., the 1st respondent in this Appeal, wanted to proceed against the property for realization of the amount under the award, the appellant herein filed a claim petition in EA.no.87 of 2007 in EP.no.25 of 2001 in MVOP afore-stated, requesting to raise the attachment in respect of the petition schedule property. On merits and by the orders impugned in this Appeal Suit, the claim petition is partly allowed and the attachment was raised insofar as the joint half share of the appellant/claim petitioner in the property that was subject matter of attachment; and, in respect of the remaining half share that belongs to the 2nd respondent/JDr, the claim petition is dismissed and the attachment was made absolute insofar as that share. Aggrieved thereof, the present Appeal Suit is filed by the third party/claim petitioner.

2. When the appeal is taken up for hearing, the appellant/claim petitioner; G.Sesha Vijaya Kumar, the Special Power of Attorney holder of the 1st respondent/DHr, and their respective learned counsel are present in the Court. This Court by separate orders passed today in IA.No.2 of 2018 accorded permission to the Special Power of Attorney holder of the 1st respondent to represent the 1st respondent in the appeal suit.

3. The appellant, the Special Power of Attorney holder of the 1st respondent and their respective counsel stated that the matter is settled

amicably; that pursuant thereto, the appellant/claim petitioner and the Special Power of Attorney holder of the 1st respondent entered into a compromise; that the terms of compromise are reduced into writing in the form of a memorandum of compromise; that the same was signed by the Special Power of Attorney Holder of the 1st respondent, the appellant/claim petitioner and their respective counsel; and, that the said memorandum is filed along with IA.no.2 of 2018 requesting to record compromise and dispose of the appeal suit in terms of the compromise. They further stated that the respondents 2 & 3 are not necessary parties and that the same is also mentioned in the terms of compromise and that the Appeal Suit may be dismissed as withdrawn against the said respondents.

4. The appellant and the Special Power of Attorney holder of the 1st respondent are identified by their respective counsel. They produced their original Aadhar Cards. Copies of the same are placed on record.

5. The appellant and the Special Power of Attorney Holder of the 1st respondent admitted the terms of compromise. The Special Power of Attorney Holder of the 1st respondent had also stated that Rs.5,00,000/- was paid by way of a demand draft bearing DD.no.075549, dated 27.07.2018, drawn on Indian Bank, Nuzveed, in the name of the 1st respondent in whose favour the award was passed in the MVOP and that the said draft was encashed and that there are no other claims between the appellant and the 1st respondent.

6. Be it noted that terms vii of the terms and conditions mentioned in the memorandum of compromise reads as follows:

- “vii. Whereas, it is agreed that the claim petitioner is entitled to enjoy the EP schedule property with absolute rights of marketable title upholding the Will dated 29.4.2000 executed by Sri Deenavatsala Rao (Exs.A.1 and 5) in exclusion of the respondent Nos.2 and 3.”,

The appellant, the special power of attorney holder of the 1st respondent and their respective counsel submitted that the said term need not be recorded and that the same may be deleted from the terms of compromise and that the compromise may be recorded excluding the said term.

7. Both the appellant and the special power of attorney holder of the 1st respondent asserted the terms of compromise excluding term no.vii and stated that they have no objection for recording the compromise excluding the said term. This Court is satisfied that the compromise was entered into with free will & consent and without any pressure from any quarter. Since the terms of compromise are admitted, this Court is satisfied that the appeal suit can be disposed of in terms of compromise (excluding term no.vii) and as desired by the appellant/claim petitioner and the Special Power of Attorney Holder of the 1st respondent.

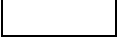
8. Accordingly, IA.no.1 of 2018 is ordered. Consequently, the Appeal Suit is disposed of in terms of compromise, as stated in the Memorandum of compromise excluding term no.vii. The Memorandum of compromise (excluding term no.vii) shall form part of this judgment and decree. The Appeal Suit is dismissed as withdrawn against the respondents 2 & 3.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, pending in the Appeal Suit shall stand closed in the light of this final order.

JUSTICE M. SEETHARAMA MURTI

Date: 6th November, 2018
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