

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 1105 OF 2018

ORDER:

This civil revision petition is filed under Section 115 of the Code of Civil Procedure (for short, 'C.P.C.') challenging the order dated 29-11-2017 in E.A.No. 214 of 2017 in E.P.No. 86 of 2017 in O.S.No. 198 of 2016 on the file of the Court of Principal Junior Civil Judge at Kothagudem (for short, 'the Court below'), whereby the Court below dismissed the abovementioned E.A. filed by the petitioner under Order XXI Rule 26 of C.P.C. for grant of stay of execution proceedings pending disposal of the petitions under Section 5 of the Limitation Act, 1963 (for short, 'the Act'), and under Order IX Rule 13 of C.P.C. filed by her in the above suit.

2. It is the case of the petitioner that as she was suffering from serious health problems, she could not attend the Court below and therefore suffered an *ex parte* decree and filed an application under Order IX Rule 13 of C.P.C. along with application under Section 5 of the Act to set aside the *ex parte* decree after condoning the delay and that she filed E.A.No. 214 of 2017 for stay of proceedings in E.P.No. 86 of 2017 during pendency of the above applications on the ground that she got good grounds to succeed in the main suit.

3. The Court below dismissed the E.A. assigning its own reasons and the same is now challenged before this Court on various grounds.

4. During hearing, learned counsel for the petitioner would contend that when the application filed under Order IX Rule 13 of C.P.C. along with application under Section 5 of the Act is pending, the Court below can exercise power under Order XXI Rule 26 of C.P.C. and grant stay for a limited period and placed reliance on *V.Divakara Rao and others Vs. V.Srinivasa Rao*¹ in support of his contention.

5. *Per contra*, learned counsel for the respondent would contend that the petitioner is about to retire from her service and if the petitioner is allowed to retire from service on attaining the age of superannuation, it is difficult for the respondent to recover the amount due under the decree.

6. As per the principle laid down in the above judgment, the Court can grant *interim* stay for a limited period enabling the party who filed petition to set aside *ex parte* decree and while exercising power under Section 115 of C.P.C., the obligation of the Court is to protect the interests of both parties.

7. Keeping in view the above principle, there shall be stay of all proceedings in E.P.No. 86 of 2017 in O.S.No. 198 of 2016 on the file of the Court below for a period of six months from today subject to the petitioner furnishing security of immovable property or bank guarantee for the decretal amount within a week from today. Meanwhile, the Court below is directed to dispose of the applications filed under Order IX Rule 13 of C.P.C. and Section 5 of the Act in accordance with law. In the event of

¹ 2004 (5) ALD 626

failure to comply with the condition, the stay granted shall automatically stand vacated.

8. Subject to the above, the civil revision petition is disposed of. Pending miscellaneous petitions if any shall stand closed in consequence.

M.SATYANARAYANA MURTHY, J.

06-04-2018.

JSK

