

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1263 of 2018

ORDER:

This Civil Revision Petition, under Section 115 of CPC, is filed challenging the Docket Order dt. 20.02.2018 in EP.No.58 of 2008 in O.SNo.476 of 2003 passed by IV Senior Civil Judge, City Civil Court, Hyderabad, on the Memo filed by the Judgment Debtor.

It is the case of the petitioner that the petitioner is the J.Dr in the decree passed by the trial Court in O.SNo.476 of 2003 on the file of III Senior Civil Judge, City Civil Court, Secunderabad, and the said decree was passed on 27.07.2007 without notice to the petitioner and thereafter the petitioner filed an application under Order 9 Rule 13 CPC to set aside the *ex parte order* dt.27.07.2007 along with the application to condone delay of more than 200 days and accordingly, delay condonation petition was ordered by the trial Court on 18.09.2014, subject to deposit of half of the decretal amount within the time fixed by the Court stipulated in the Order and accordingly, the petitioner deposited the amount as directed and the petition filed under Order 9 Rule 13 CPC is still pending as no Presiding Officer was posted in the Court.

In the meanwhile, the decree dt.27.07.2007 was executed by the D.Hr and sale was held by the Court on 20.02.2018 at 03.00 pm and the bid was knocked down on behalf of auction purchaser, who deposited the bid amount on 06.03.2018. Thereafter, the petitioner/JDR filed a Memo informing the Court about compliance of direction and in the circumstances stated above, the petition filed under Order 9 Rule 13 CPC is pending. But the trial Court passed the impugned Order rejecting the Memo filed by this Petitioner.

Aggrieved by the Order dt.20.02.2018, the present revision is filed under Section 115 of CPC raising several contentions, mainly on the ground that the petitioner deposited the amount as directed by the Court and condonation of delay was ordered, the Court ought not to have realise the decree amount by ordering sale when a petition under Order 9 Rule 13 CPC is pending and that after deposing half of the decretal amount by this petitioner, ordering for sale to realise the decretal amount is erroneous and prayed to set aside the Order passed by the trial Court.

Undoubtedly, the court passed an order dt. 18.09.2014 condoning delay, subject to deposit of half of the decretal amount. It appears that the petitioner has complied with the directions issued by the Court. Since there was no stay under Order 21 Rule 26 CPC, the Court proceeded to realise the decree amount by sale of the property and even the petitioner did not file any petition for adjournment or stoppage of sale under Order 21 Rule 69 CPC and he simply filed a Memo informing the Court about compliance of the order. When a sale was held in the absence of stay or adjournment or stoppage of sale under Order 21 Rule 69 CPC, the Court can proceed to realise the decree amount by sale of the property and exercise of such jurisdiction is in accordance with law.

When a sale was held, the course open to the petitioner is to file appropriate application either under Order 21 Rule 89 or 90 CPC, but not by filing the Memo. Therefore, rejection of Memo by Docket Order cannot be faulted.

When the proclamation was made specifying the time and date, the petitioner would have taken necessary steps either under Order 21 Rule 26 or 69 CPC and instead of resorting to such procedure, the

petitioner simply filed the Memo brining to the notice of the Executing Court about compliance of the direction to deposit half of the decretal amount in a petition filed for condonation of delay and that would not serve any purpose since the Executing Court cannot go beyond decree. Hence, the Order passed by the Executing Court is not without jurisdiction or passed such order in excess of jurisdiction that conferred on it or in exercise of jurisdiction illegally or irregularly to attract Section 115 of CPC. Therefore, the Order passed by the Executing Court is in accordance with law and this Court cannot exercise power under Section 115 of CPC to set aside the Order passed by the Executing Court.

Yet, another lacuna in this case is that filing of a Memo. No judicial Order can be passed on a Memo since Memo is an intimation to the Court about a particular fact. But, the petitioner invited an Order on the Memo and challenged the same in the present revision under Section 115 of CPC. As discussed above, the Order is not covered by (a) to (c) of Section 115 of CPC and consequently, this Civil Revision Petition is devoid of merits and deserves to be dismissed.

With the above observation, this Civil Revision Petition is dismissed. However, it is left open to the Petitioner to redress his grievance by filing appropriate application.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 26-02-2018
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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