

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.1368 OF 2018

ORDER :

This Civil Revision Petition is filed by the petitioner/deeree holder against order dated 16.11.2017 in E.P.No.135 of 2011 in L.A.O.P.No.38 of 1989, wherein and whereby the Court below closed the EP basing on the judgment reported in **Periyar and Pareekanni Rubbers Limited v. State of Kerala**¹.

Heard learned counsel for the petitioner and learned Government Pleader for Arbitration.

Learned counsel for the petitioner submits that the Court below after considering the calculation memo filed by the petitioner as well as the respondent therein, passed order dated 19.10.2016 in E.P.No.135/2011 in L.A.O.P No.38 of 1989 holding that the respondent/judgment debtor therein is liable to pay an amount of Rs.14,10,935/- and directed the judgment debtor to deposit the said amount. Aggrieved by the aforesaid order, the judgment debtor/respondent herein preferred CRP No.2753 of 2017 before this Court. This Court granted interim stay of execution on 07.07.2017 on condition subject to the respondent herein depositing Rs.10,00,000/- (Rupees ten lakhs only) to the credit of E.P.No.135 of 2011 in LAOP No.38 of 1989, within a period of eight weeks. He submits that though the respondent/judgment debtor filed extension petition, the same is pending, but all of a sudden the Executing Court, without

¹ (2016) 1 Supreme Court Cases 294

notice to the petitioner/decreed holder, closed the EP by impugned order by placing reliance on the judgment reported in **Periyar's case (supra)**. He submits that the aforesaid judgment has no application to the facts and circumstances of the present case and that at any rate, Execution Petition cannot be closed as the CRP filed against order dated 19.10.2016 in EP No.135 of 2011 is pending.

It is to be seen that challenging the order dated 19.10.2016 in EP No.135 of 2011, the respondent/judgment debtor filed CRP No.2753 of 2017 before this Court, wherein interim stay was granted on 07.07.2017 on condition of the respondent paying Rs.10,00,000/- (Rupees ten lakhs only) to the credit of E.P.No.135 of 2011 in LAOP No.38 of 1989. Admittedly, the said CRP is pending adjudication and the judgment debtor also filed extension petition. While so, it is not known why the Executing Court, all of a sudden closed the EP and that no reason is forthcoming from the impugned order about the relevancy of judgment of Hon'ble Supreme Court in **Periyar's case**. It is also not known how the Executing Court can ignore the order dated 19.10.2016 passed by it in E.P.No.135 of 2011, which is the subject matter in CRP No.2753 of 2017.

In view of foregoing reasons, the impugned order of the Court below is unsustainable and same is liable to be set aside and accordingly set aside.

Accordingly, this Civil Revision Petition is allowed at the stage of admission itself. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

15-03-2018
kvs



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