

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.1359 OF 2018

ORDER

This civil revision petition under Section 115 CPC arises out of the order dated 23.02.2018 passed by the learned Additional Junior Civil Judge, Cyberabad at Miyapur, Ranga Reddy District, in E.A.No.4 of 2018 in E.P.No.45 of 2017 in O.S.No.155 of 2016. By the said order, the Court below held that it was just and necessary to grant police aid to the decree-holder to implement the warrant of the Court in order to enjoy the fruits of the decree and accordingly allowed the E.A. as prayed for.

The petitioner, being the defendant/judgment-debtor in the suit, filed this revision claiming that the *ex parte* decree dated 26.09.2016 was passed in O.S.No.155 of 2016 by the Court below without her knowledge and thereupon, she filed an I.A. in the suit to set aside the *ex parte* judgment and decree dated 26.09.2016 along with an application to condone the delay in seeking such relief. She further claimed that she filed an application in the execution proceedings, under Order 21 Rule 26 CPC, seeking stay of execution of the decree in O.S.No.155 of 2016, until disposal of her condone delay application and the application under Order 9 Rule 13 CPC. These applications were yet to be numbered but in the meanwhile, the decree-holder filed E.A.No.4 of 2018 in E.P.No.45 of 2017 praying for police aid to implement the decree.

Upon hearing arguments, the Court below, while directing the office to register the applications filed by the judgment-debtor and issuing notice thereon to the decree-holder, passed orders on the very same day allowing E.A.No.4 of 2018, granting police aid to implement the decree. This was on 23.02.2018.

By order dated 27.02.2018, this Court granted interim suspension of the operation of the order dated 23.02.2018 passed by the Court below in E.A.No.4 of 2018 in E.P.No.45 of 2017 in O.S.No.155 of 2016.

Heard Sri Deepak Misra, learned counsel for the petitioner/judgment-debtor, and Sri Raja Gopallavan Tayi, learned counsel for the respondent/decree-holder.

Sri Raja Gopallavan Tayi, learned counsel, would contend that even prior to the order dated 23.02.2018, the Court below had granted police aid for execution of the decree, but as the benefit of the said order could not be availed fruitfully, the request for police aid was renewed by his client in E.A.No.4 of 2018 in E.P.No.45 of 2017.

Learned counsel however does not dispute that by the time E.A.No.4 of 2018 was filed, renewing the request for grant of police aid, the petitioner/judgment-debtor already filed applications to set aside the *ex parte* decree and also to stay further proceedings in the E.P. He also does not dispute the fact that the Court below, while granting an order of police aid in E.A.No.4 of 2018 in E.P.No.45 of 2017, directed notice on the said applications filed by the petitioner/judgment-debtor in the suit and in the execution petition.

Given these circumstances, this Court is of the opinion that allowing the decree-holder to execute the decree of delivery of possession, while keeping the applications filed by the petitioner/judgment-debtor pending, would result in a fait accompli being presented to the Court by the date those applications are taken up by the Court below. Having ordered notice on the said applications, the Court below ought not to have granted police aid so as to enable the respondent/decree-holder to execute the decree, even though an application was pending before it to set it aside.

The order under revision is therefore unsustainable and is accordingly set aside. The Court below is directed to dispose of the applications filed by the petitioner/judgment-debtor, be it in the suit or in the execution petition, in the first instance and only thereafter take measures for execution of the decree, in the event it stands confirmed.

The civil revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

27th APRIL, 2018

Sv

SANJAY KUMAR, J

