

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.1645 OF 2018

ORDER:

This revision petition is filed under Section 115 C.P.C. challenging the order dated 19.01.2018 in E.A.No.22 of 2018 in E.P.No.272 of 2016 in O.S.No.1877 of 2011 passed by the V Senior Civil Judge, City Civil Court, Hyderabad, whereby the petition filed under Section XXI Rule 26 read with Section 151 C.P.C. was allowed subject to deposit of Rs.50,000/- to the credit of E.P. while making it clear the said deposit would be in addition to the amount, if any, already recovered from the salary of the petitioner/JDr No.3 in execution of the decree.

The main contention of the petitioner/JDr No.3 before this Court is that he filed petition under Order IX Rule 13 C.P.C. to set aside the exparte decree dated 29.11.2012 along with a petition to condone the delay in filing the petition to set aside ex-parte decree and also E.A.No.22 of 2018 to stay all further proceedings till disposal of petition filed under Section 5 of the Limitation Act on the ground that the Court attached salary of the petitioner/Judgment Debtor No.3 for recovery of decree debt though he is not alone liable to pay the decree debt. When the petition is pending for condonation of delay to set aside the exparte order under Order IX Rule 13 C.P.C., the Court can grant interim stay of proceedings for a limited period and the said petition was ordered subject to condition stated above.

Now the contention of the petitioner/JDr No.3 is that 1st respondent recovered Rs.24,000/- from the salary of the petitioner by attachment and issuing direction by the Court below to deposit Rs.50,000/-, in addition to the amount already recovered is erroneous and prayed to set aside the impugned order, which is onerous condition.

As seen from the impugned order, the Court below granted stay of all further proceedings exercising power under XXI Rule 26 C.P.C. subject to condition referred supra till disposal of the petitions filed under Section 5 of the Limitation Act and Order IX Rule 13 C.P.C., which appears to be erroneous and the Court can grant stay for limited period in usual course as per the judgment of this Court in **Divakara Rao and others v V. Srinivasa Rao**¹, but granting stay for unlimited period i.e. till disposal of the petition pending before the Court below is erroneous, but this order has not challenged by the Decree Holder. Therefore, I am not inclined to interfere with the impugned order to that effect. The Court below directed to deposit Rs.50,000/- in addition to the amount already recovered by attachment of salary and this condition is not onerous in view of granting unlimited stay. Therefore, the impugned order does not call for any interference of this Court in exercise of power under Section 115 C.P.C., which is limited and such jurisdiction can be exercised by this Court only when the Court below passed any order appears to have exercised jurisdiction not vesting on it by law or failed to exercise jurisdiction vested or to have acted on its jurisdiction

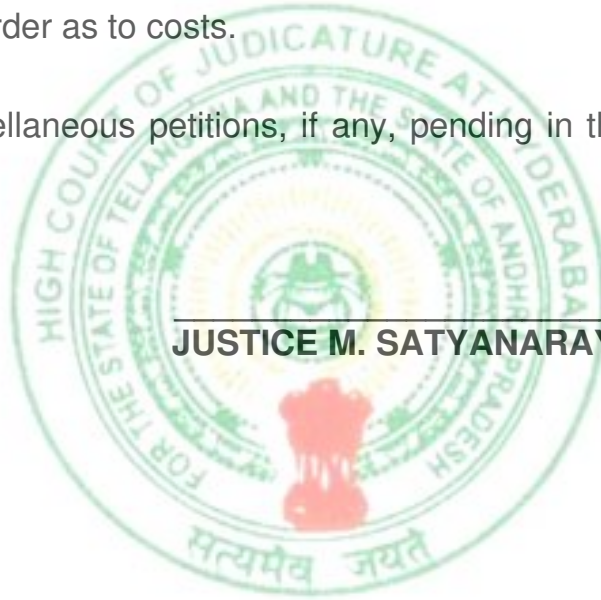
¹ 2004(5) ALD 626

illegally or with material irregularity. In the absence of any such illegality or irregularity in exercise of jurisdiction by the Court below or failure to exercise the jurisdiction that vested on it or exercised by excessive jurisdiction that conferred on it. In the absence of establishing any of these three grounds, this Court cannot interfere with the order passed by the Court below. Therefore, I find no merit in the revision petition and it is devoid of merits and the same is liable to be dismissed.

Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

13.03.2018
kvrn



JUSTICE M. SATYANARAYANA MURTHY