

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1742 OF 2012

ORDER:

This Civil Revision Petition, under Section 115 CPC, is filed questioning the order in E.P.No.304 of 2008 in O.S.No.3555 of 2006 dated 21.03.2012 passed by the learned III Additional Junior Civil Judge, Vijayawada, Krishna District, by executing decree, ordering detention of Judgment Debtor (J.dr.) in prison.

The respondent - Decree Holder (D.hr.) filed E.P.No.304 of 2008 for arrest of petitioner - J.dr. and also for attachment of schedule property registered in the name of J.dr. for realisation of the decretal amount. The respondent, who is a GPA Holder, representing the decree holder submitted that J.dr. kept his construction materials and bamboo fencing in the premises on its northern side despite being pathway leading to the house of the D.hr; as such, FIR was registered by the Machavaram Police Station on 09.01.2008 for the offences punishable under Sections 447 and 506 IPC in C.C.No.296 of 2008 on the file of Additional Chief Metropolitan Magistrate, Vijayawada; and, thus, violated the order of permanent injunction granted by the Court.

The petitioner - J.dr. filed counter contending that the respondent is incompetent to execute the decree being GPA holder and a non-practicing advocate; he being influential,

managed police to foist false case against the J.dr; taking advantage of the *ex parte* decree, the D.hr. is trying to grab the entire property of J.dr; absolutely there is no violation of *ex parte* permanent injunction granted in favour of the D.hr, hence, prayed to dismiss the execution petition.

The Trial Court, upon hearing and conducting necessary enquiry, got examined PWs.1 to 3 on behalf of D.hr. and got marked Exs.A.1 to A.22. On behalf of J.dr. RW.1 was examined and no documents were marked.

Upon hearing both the counsel, the Executing Court ordered detention of J.dr. in civil prison by exercising power under Order XXI Rule 32(1) while declining to order attachment of property under Order XXI Rule 32(1) CPC.

Feeling aggrieved by the order, the J.dr. preferred the present revision mainly on the ground that the GPA executed in favour of the D.hr. is not valid, and the petition is pending for setting aside the *ex parte* decree, which was not considered by the Court below; that when E.P. was for both attachment of property and detention of J.dr. to civil prison, without obtaining any prior leave of the Court, as required under Order XXI Rule 21 CPC, detention was ordered; as such, E.P. is not maintainable; and, thereby, the order passed by the Court below is unsustainable and prayed to set aside the same.

Sri K.S.Murthy, learned Counsel for the petitioner, reiterated the grounds urged in the petition while contending

that failure to obtain leave of the Court for simultaneous execution is a serious lacuna which is fatal to the execution; and, thereby, the order of the Executing Court is not sustainable and prayed to set aside the same.

During hearing, Sri Gangadhar Chamorthy, learned Counsel appearing for the respondent – D.hr. contended that Order XXI Rule 32 CPC permits the Court to proceed either against the person or property in execution of decree for specific performance, and not permanent injunction and places reliance on **Bethia Venkanna v. Sait Chunilal Moolchand Registered Firm, Kakinada**¹. It is also contended that, though the petitioner sought two reliefs simultaneously to execute the decree as permitted under Order XXI Rule 21 CPC, the Court ordered only relief of detention of the petitioner for violation of permanent injunction; therefore, failure to obtain leave of the Court under Order XXI Rule 21 CPC would not come in the way of passing such order; and, consequently, the order need be set aside.

Admittedly, respondent filed suit in O.S.No.3555 of 2006 and obtained *ex parte* decree for permanent injunction restraining the J.dr., his men, agents etc. from interfering with the peaceful possession and enjoyment of the plaint schedule property. Moreover, respondent filed E.P., under Order XXI Rule 32 CPC, claiming two reliefs i.e. detention of

¹ AIR 1961 AP 63

J.dr. in prison and also attachment of schedule property registered in the name of the petitioner – J.dr. The Court below ordered detention of the petitioner – J.dr. in civil prison by exercising power under Order XXI Rule 32 CPC, while declining to order attachment of immovable property registered in favour of the J.dr.

Order XXI Rule 21 CPC mandates leave of the Court to execute a decree simultaneously for more than one relief. When no such leave was obtained, the Court cannot permit the D.Hr. to prosecute for more than one relief. But, here, only detention of the petitioner – J.dr. was ordered while exercising power under Order XXI Rule 32 CPC.

Order XXI Rule 32 CPC deals with execution of decree for specific performance for restitution of conjugal rights, or for an injunction. Sub-clause (1) makes it clear that where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both. Thus it is clear from Order XXI Rule 32 CPC that the Court may order attachment of property or detention of the person, who disobeyed the

decree of perpetual injunction, in civil prison or both and when the petitioner wanted to enforce the decree in two modes i.e. attachment of immovable property and detention, he has to obtain leave of the Court under Order XXI Rule 21 CPC.

Though the respondent – D.hr. claimed two modes of execution, the Court ordered only detention of the petitioner in civil prison in execution of decree for perpetual injunction while exercising power under Order XXI Rule 32 CPC.

In view of the principle laid down by the Apex Court in **Shyam Singh v. Collector, District Hamirpur**², such decree can be executed either against property or by detaining the J.dr. Therefore, the main requirement, to order detention or attachment of the property, is that the D.hr. has to satisfy the Executing Court that the J.dr. disobeyed perpetual injunction granted in favour of the D.hr. The evidence on record establishes that the petitioner disobeyed the decree of perpetual injunction and Crime was registered for the offences under Sections 447 and 506 IPC which is pending trial in C.C.No.296 of 2008 on the file of Additional Chief Metropolitan Magistrate, Vijayawada. Therefore, the Court recorded satisfaction that the petitioner disobeyed permanent/perpetual injunction granted in favour of D.hr. and rightly ordered detention of the petitioner in execution of decree of permanent injunction. Thus, the Court below

² 1993 Supp(1) SCC 693

committed no error warranting interference of this Court while exercising power under Section 115 CPC. Since the power of this Court is limited and this Court can exercise such power when the Court below failed to exercise the jurisdiction conferred on it or exercised its jurisdiction in excess or exercised jurisdiction illegally or irregularly. But, in the present revision no such ground is raised. Thereby, the revision is devoid of merits and deserves to be dismissed.

In the result, the Civil Revision Petition is dismissed.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

Dt:31.01.2018
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