

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.1640 and 1647 of 2018

COMMON ORDER:

CRP.No.1640 of 2018 is filed having been aggrieved of the order, dated 21.02.2018, in EA.No.15 of 2018 in EP.No.23 of 2016 whereby the executing Court dismissed the said application filed by the JDrs.3 & 4 for setting aside the order eschewing the affidavit filed in lieu of examination in chief of RW2 (JDr.NO.4) and did not accord permission to file a fresh affidavit in lieu of her examination in chief.

CRP.No.1647 of 2018 is filed assailing the order, dated 27.02.2018, in EA.No.16 of 2018 in EP.No.23 of 2016 whereby the said application which is filed by the JDrs 3 & 4 to receive documents was directed to be posted along with the Execution Petition.

I have heard the submissions of the learned counsel for the revision petitioners-JDrs 3 & 4 and of the learned counsel for the respondents 1 to 5/ DHrs. Respondents 6 & 7 are stated to be JDrs1 & 2.

I have perused the material records in both the revision petitions.

Learned counsel for the revision petitioners would submit that the DHrs, having obtained a decree for a perpetual injunction, filed the afore-said Execution Petition for execution of the said decree by seeking civil imprisonment of the JDrs and that in the said Execution Petition, while enquiry is going on, the affidavit in lieu of examination in chief of the 4th JDr was filed and that for non appearance of the said JDr, on 19.02.2018, and on previous dates of adjournments, her chief affidavit was eschewed from consideration and that the evidence was closed and that as on today the Execution Petition is posted for arguments and that in view of the serious nature of the relief that is

claimed in the Execution Petition and the defence the JDrs are having which is substantial in nature, it is just and necessary to give them an opportunity to contest the Execution Petition on merits by setting aside the impugned orders.

Learned counsel for the DHrs, while seriously opposing for granting any relief in these revisions, supported the orders of the Court below and *inter alia* contended that the JDrs have no respect for law and that the Execution Petition is filed as they are violating the perpetual injunction decree, which they have suffered, and that despite police aid having been granted by the executing Court, they are not obeying the said orders and are harassing the DHrs.

Having regard to the facts and submissions and the further submission of the learned counsel for the JDrs 3 & 4 that a petition has already been filed before the executing Court for reopening the evidence on their side, this Court is of the considered view that in a matter of this nature, it is just and fair to provide an opportunity to the JDrs 3 & 4 to adduce evidence before the matter is decided on merits, as such a course meets the ends of justice.

In the result, CRP.No.1640 of 2018 is allowed and the order impugned is set aside. As a sequel, EA.No.15 of 2018 is allowed according permission to the 4th JDr to file fresh affidavit in lieu of her examination in chief within a week from the date of receipt of a copy of this order. It is made clear that in the event the said direction is complied with, the executing Court shall record the evidence of the said witness and proceed further with the enquiry in the matter as expeditiously as possible and complete the enquiry in any event within two (02) weeks after the completion of recording of the evidence of the said witness.

CRP.No.1647 of 2018 is allowed and the order directing to post EA.No.16 of 2018 along with the Execution Petition is set aside and the executing Court is

directed to hear and dispose of the said application in accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

06.04.2018
Vjl

M. SEETHARAMA MURTI, J

