

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1688 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1620 of 2017 in I.A.No.1084 of 2017 in O.S.No.105 of 2013 dated 20.12.2017 passed by the Principal Senior Civil Judge, Kurnool.

The petitioner filed an application under Section 151 C.P.C to grant stay of all further proceedings in E.P.No.249 of 2014 in O.S.No.105 of 2013 pending on the file of Additional Senior Civil Judge, Kurnool, till disposal of the above suit. It is alleged that the respondent obtained an *exparte* decree and filed E.P.No.249 of 2014 in O.S.No.105 of 2013 pending on the file of Additional Senior Civil Judge, Kurnool, for realization of the decree debt under Order XXI Rule 11(2) r/w Rules 37 & 38 of C.P.C, by committing the J.Dr/petitioner herein to the civil prison after his arrest.

The respondent is not entitled to seek his arrest, as O.S.No.105 of 2013 is based on discharged promissory note and due to misplacing the record in the office of learned counsel and due to strike period, he could not know the date of adjournment and thereby, he was unable to appear before the Court on 24.10.2013 to file his written statement and he filed separate application for condoning delay in filing petition to set-aside the

exparte decree along with the relevant applications and requested to grant stay of all further proceedings.

The Court below passed the impugned order granting stay of all further proceedings on condition that the petitioner shall deposit half of the decretal amount within 15 days from the date of the order, failing which the order shall stand cancelled automatically. Aggrieved by the said order, the present civil revision petition is filed on the ground that imposition of such condition, is contrary to the judgment of the Apex Court in **GMG Engineering Industries and others v. ISSA Green Power Solution and others**¹ and thereby, committed an error. Hence, the order passed by the Trial Court, imposing the condition to deposit half of the decretal amount is an onerous condition and requested to set-aside the same, while allowing the civil revision petition.

During hearing, learned counsel for the petitioner by relying on the principle laid down in the above judgment, requested to set-aside the impugned order. Whereas, learned counsel for the respondent drawn attention of this Court to Order XXI Rule 26 C.P.C, where the Court is empowered to impose such condition, as it thinks fit, while granting stay of all further proceedings in execution during pendency of the petition filed before the Court to set-aside the *exparte* order and decree under Order IX Rule 13 C.P.C and thereby, the condition imposed by the Court is in consonance to Order XXI Rule 26(3) C.P.C and requested to dismiss the petition.

¹ 2015 (5) ALD 32 (SC)

The petitioner filed petition under Section 151 C.P.C in the original Court, during pendency of execution proceedings under Order XXI Rule 37 C.P.C, to realise the decree debt in O.S.No.105 of 2013.

Order XXI Rule 26 C.P.C deals with powers of the Executing Court to grant stay of all further proceedings upon showing sufficient cause, subject to clauses 2 & 3 of the same provision. Even according to the allegations made in the petition, affidavit filed along with petition, an allegation is made that, he filed a petition for condoning delay in filing a petition to set-aside the *exparte* decree along with a petition to set-aside the *exparte* decree before the Principal Senior Civil Judge, Kurnool. A copy of the petition is placed before this Court during hearing and the petitioner filed I.A.No.929 of 2014 to condone delay of 126 days in filing the written statement. But, it was not known whether the petitioner filed I.A.No.929 of 2014 before filing I.A.No.1084 of 2017 i.e. to set-aside the *exparte* decree. But, the present petition was filed certainly after filing petitions in I.A.No.929 of 2014 and I.A.No.1084 of 2017. Therefore, the allegations made in the petition that the petitioner filed petitions to set-aside *exparte* order along with the petition to condone delay of 126 days is to be accepted. However, Order XXI Rule 26 C.P.C has no application to the present facts of the case, since these petitions were not filed in the Executing Court to file petition under Section 151 C.P.C in original Court to grant stay of all further proceedings. but, imposition of such condition to grant stay of execution proceedings is in accordance with law, since this Court can impose such

condition. But, if it is an order while setting aside the *exparte* decree under Order IX Rule 13 C.P.C, the principle laid down in **GMG Engineering Industries and others v. ISSA Green Power Solution and others** (referred supra), will come in the way and such order cannot be sustained, since the order is under Order IX Rule 13 C.P.C. But, when it is an order under Order XXI C.P.C, it cannot be set-aside, as the Trial Court concluded that it is just and necessary to impose such condition. Therefore, the order passed by the Trial Court cannot be interfered with, while exercising power under Article 227 of the Constitution of India, subject to order in I.A.No.929 of 2014 and I.A.No.1084 of 2017. However, this order will not come in the way of disposing the petition filed under Order IX Rule 13 C.P.C and Section 5 of Limitation Act.

With the above observations, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.11.2018

SP