

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 3219 OF 2018

ORDER:

This civil revision petition is filed under Section 115 of the Code of Civil Procedure (for short, 'CPC') challenging the order dated 20-03-2018 in E.P.No. 136 of 2017 in D.R.K.No. 148 of 2016 on the file of the Court of Principal Junior Civil Judge, Proddatur (for short, 'the Court below'), whereby the Court below ordered attachment under Order 21 Rule 48 of CPC for realization of the amount due under the award passed by arbitrator.

2. The case of the petitioners is that the arbitrator passed the above award without serving any notice; that in execution of the award, a notice was served when the petitioners were remained *ex parte* and that thereupon, the impugned order is passed.

3. The main contention of learned counsel for the petitioners in the present revision is that the petitioners filed a petition under Order XXI Rule 105 of C.P.C. to set aside the *ex parte* order and it is pending for adjudication and when the petition is pending, passing the impugned order is an illegality.

4. At the hearing, learned counsel for the petitioners while reiterating the facts narrated above contended that the petitioners are settling the dispute and they are likely to file an application for grant of installments for payment of the decretal amount and therefore requested to pass appropriate orders setting aside the order passed by the Court below dated 20-03-2018.

5. It is an admitted fact that an award was passed by the arbitrator against the petitioners and others and for execution of the award, E.P.No. 136 of 2017 is filed before the Court below for attachment of the salary of the petitioners

invoking Order XXI Rule 48 of CPC. In E.P. also, the petitioners remained *ex parte* and filed a petition under Order XXI Rule 105 of CPC but no petition under Order XXI Rule 26 of CPC is filed for grant of stay of execution. In the absence of any stay of execution, passing the impugned order is not an illegality. The petitioners at best may file appropriate application seeking installments before the Court below but this Court cannot exercise such power to convert a decree for realization of certain amount into one for payment of amount in installments. I, therefore, find no illegality in the impugned order to exercise power under Section 115 of CPC and the petition is liable to be dismissed.

6. The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 22-06-2018.
JSK

M.SATYANARAYANA MURTHY, J.

