

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3481 OF 2018

ORDER:

This civil revision petition is filed under Section 115 of C.P.C, challenging the order in E.A.No.87 of 2018 in E.P.No.163 of 2008 in O.S.No.50 of 2003 dated 24.04.2018 passed by the Principal Senior Civil Judge, Kadapa, dismissing the petition filed for issue of cheque for Rs.2,36,000/- in her favour.

For the sake of convenience, the parties will hereinafter be referred, as arrayed before the Court below.

The petitioner/D.Hr is the decree holder who filed E.P. in O.S.No.50 of 2003 for recovery of money by sale of property. When E.P schedule property was brought for auction, the judgment debtor filed an application to set-aside the exparte order which was allowed by this Court and a conditional order was passed. Since the said conditional order was not complied with, the petition was dismissed. As such, the judgment debtor approached this Court in C.R.P.No.5705 of 2017, in which he was directed to deposit money to the credit of executing Court. The decree holder pleaded that the judgment debtor deposited the said amount as directed by this Court and she is entitled to withdraw the said amount.

The respondent/J.Dr filed a counter admitting filing of E.A.No.1335 of 2016 to set-aside the exparte order. The judgment debtor admitted that the said application was dismissed by this Court on 13.07.2017 for non-payment of Rs.1,000/-. Then the judgment debtor filed another application E.A.No.475 of 2017 to

restore the above application which was dismissed by this Court. Thereafter the respondent/J.Dr filed C.R.P.No.5705 of 2017 before this Court and J.Dr pleaded that this Court allowed the said revision by imposing costs of Rs.1,000/- and further directed the judgment debtor to deposit one half of the E.P. amount within eight weeks from the date of order. In compliance of the directions issued by this Court, the J.Dr admitted that she deposited Rs.2,36,00/-. Further, this Court allowed C.R.P.No.5705 of 2017, by setting aside the order dated 13.09.2017 in E.A.No.475 of 2017 and restored E.A.No.1355 of 2016 and the D.Hr was directed to comply said order by 13.11.2017 by depositing Rs.1000/- and filing counter. D.Hr was further directed to deposit one half of the E.P. amount within eight weeks from the date of order.

After careful perusal of the material on record, the Court below was of the opinion that the petitioner/D.Hr is not entitled to withdraw the said amount, when the E.P. is pending. Aggrieved by the said order of the Court below, the present civil revision petition is filed.

During hearing, learned counsel for the petitioner reiterated the contentions urged in the grounds of the petition.

As seen from the material on record, the J.Dr filed petition to set-aside the exparte order and the same was allowed on payment of Rs.1,000/-, but due to non-compliance of the pre-condition issued by this Court, petition was dismissed. However, the revision preferred against the order, this Court directed him to deposit the costs imposed along with half of the E.P amount within eight weeks and accordingly, the amount was deposited by the J.Dr to

the credit of E.P within the stipulated time, in view of the direction issued by this Court. Taking advantage of the condition for setting-aside the order, the petitioner/D.Hr approached the Court to issue cheque for Rs.2,36,000/- lying in the deposit to the credit of E.P.

No doubt, this Court directed the respondent/J.Dr to deposit 50% of the E.P. amount without permitting the petitioner to withdraw the same. As on today, the amount lying in deposit is only in compliance of the directions issued by this Court, as a pre-condition to set-aside the order and that does not mean that this petitioner is entitled to withdraw the amount. However to avoid loss to both J.Dr and D.Hr, it is appropriate to direct the Trial Court to keep the amount in F.D.R initially for a period of two years in any nationalized bank and renew the same from time to time. But, the cheque cannot be issued in favour of this petitioner without any permission of the Court. However, D.Hr is entitled to claim interest on the decree debt in terms of decree, since no amount was paid to him towards part satisfaction. Hence, I find no error in the order passed by the Court below to exercise power under Section 115 C.P.C, since the Court can exercise power under Section 115 C.P.C only in three circumstances; (i) where the Court failed to exercise jurisdiction which is not vested on it or (ii) failed to exercise that is vested on it or (ii) exercised jurisdiction illegally or irregularly. But, in the present case, none of the grounds are raised enabling this Court to exercise such power under Section 115 C.P.C. On this ground also, the petition is liable to be dismissed at the admission stage.

In the result, the civil revision petition is dismissed. However, liberty is given to the petitioner herein to obtain permission of the Court and withdraw the amount.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:29.06.2018

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