

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3023 OF 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India aggrieved by the order dated 17.03.2017 passed in I.A.No.885 of 2016 in O.S.No.97 of 2009 on the file of the Court of the IV Additional District Judge, Nellore.

2 Heard both sides.

3 A perusal of the record reveals that the respondent herein filed O.S.No.97 of 2009 on the file of the Court of the IV Additional District Judge, Nellore for recovery of an amount of Rs.37,43,316/- from the petitioner herein. During the pendency of the suit, the respondent filed I.A.No.460 of 2009 under Order 38 Rule 5 CPC for attachment of the money in the hands of garnishee the same was allowed. After full-fledged trial, the trial court decreed the suit in favour of the respondent and against the petitioner. Thereafter, the respondent filed I.A.No.659 of 2011 to call for the amount from the garnishee and the same was allowed on 28.10.2011. By the time of decreeing the suit, an amount of Rs.37,13,433/- was lying to the credit of O.S.No.97 of 2009.

4 While the things stood thus, the respondent herein filed I.A.No.885 of 2016 under Section 151 CPC for encashment of the deposited amount. The petitioner herein filed counter opposing the said petition. The trial court, after affording reasonable opportunity to both parties, allowed the petition. Hence the present revision.

5 It is an admitted fact that the suit was decreed in favour of the respondent and against the petitioner. It is also an admitted fact that

an amount of Rs.39,13,433/- was lying to the credit of the suit. The respondent herein filed I.A.No.292 of 2017 in O.S.No.97 of 2009 for issuance of cheque in his favour.

6 A perusal of the record reveals that the petitioner herein filed A.S.No.58 of 2016 on the file of this Court, challenging the decree and judgment dated 16.12.2015 passed by the trial court, in O.S.No.97 of 2009.

7 It is needless to say that the decree holder has to file Execution Petition for recovery of the suit amount. There is no procedure in Code of Civil Procedure to file encashment petition and cheque petitions in the original suit. This court is unable to understand how the respondent filed the present petition in the original suit without resorting to filing of execution petition for realisation of decretal amount. The trial court without considering the scope of Order XXI CPC allowed the petition. If the impugned order passed by the trial court is allowed to stand, certainly, it would amount to miscarriage of justice. The order passed by the trial court is not sustainable in law.

8 Having regard to the facts and circumstances of the case, this Civil Revision Petition is allowed, setting aside the order dated 17.03.2017 passed in I.A.No.885 of 2016 in O.S.No.97 of 2009 on the file of the Court of the IV Additional District Judge, Nellore. No order as to costs. As a sequel, miscellaneous petitions if any pending in this revision petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 13.06.2018
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