

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.759 of 2017

ORDER:

This revision petition is filed under Section 115 CPC assailing the order dated 05.12.2016 passed in E.P.No.394 of 2015 in O.S.No.458 of 2011 on the file of II Additional District Court, Ranga Reddy District, at L.B.Nagar.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

4. A perusal of the record reveals that the respondent filed O.S.No.458 of 2011 against the petitioner for recovery of arrears of rent and mesne profits. The trial Court after full fledged trial decreed the suit in favour of the respondent and against the petitioner. The respondent filed E.P.No.394 of 2015 in O.S.No.458 of 2011 for attachment and sale of the movable properties in order to recover the decretal amount. The petitioner filed counter *inter alia* contending that the movable property to be attached is the individual property of the petitioner and not the company's movable property.

5. Both counsel in all fairness submitted that the decree was passed against M/s. SPR Publications Private Limited. In order to appreciate the contention of the learned counsel for the petitioner, this Court carefully perused the impugned order. There is no mention in para – 5 of the impugned order that the movable property to be attached belongs to M/s. SPR Publications Private Limited –

Judgment-debtor. While attaching the property, the executing Court has to give a specific finding whether the movable property in question belongs to the Judgment-debtor's company or it is the personal property of the Managing Director. The executing Court without resolving the issue involved in the petition, simply attached the movable properties. Viewed from factual or legal angle, the order passed by the executing Court is not sustainable. If the order of the executing Court is allowed to stand, certainly it would amount to miscarriage of justice. Hence, this Court is of a considered view that it is a fit case to remand the matter to the Executing Court for fresh disposal.

6. In the result, the Civil Revision Petition is allowed setting aside the order dated 05.12.2016 passed in E.P.No.394 of 2015 in O.S.No.458 of 2011 and remanded to the executing Court. The executing Court is hereby directed to dispose of E.P.No.394 of 2015 in O.S.No.458 of 2011 afresh, after affording a reasonable opportunity to both the parties, in accordance with law. The executing Court is further directed to dispose of E.P.No.394 of 2015 as expeditiously as possible, preferably, within a period of one month from the date of receipt of copy of this order. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:12.12.2018

Rns