

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4709 of 2018

ORDER:

In this civil revision petition filed under Section 115 of the Code of Civil Procedure, 1908, the only grievance of the revision petitioner/Judgment Debtor ('JDr' for brevity), against whom the respondent/Decree Holder ('DHr' for brevity) is executing a decree for money, is that the Executing Court is proceeding with the enquiry in the Execution Petition filed for arrest of the JDr without simultaneously posting the applications filed by him on the original side viz. (i) the application filed for condonation of delay in seeking to set aside the *ex parte* decree; and, (ii) the application filed requesting to set aside the *ex parte* decree; and, that the said course adopted by the Court below, which is unjust and unfair, is likely to result in failure of justice.

2. I have heard the submissions of Sri Sreenivasa Rao Velivela, learned counsel appearing for the revision petitioner/JDr at the stage of admission. I have perused the material record.

3. As this Court is inclined to dispose of the revision petition at the stage of admission, no notice is ordered to the respondent/DHr.

4. The facts necessary to be stated as a prelude to this order are as follows: 'The respondent-plaintiff, having brought a suit in O.S.No.278 of 2016 against the petitioner herein/defendant on the basis of three promissory notes viz., two promissory notes for Rs.2,00,000/- each of the

year 2015; and, one promissory note for Rs.1,00,000/- of the year 2015, obtained a decree *ex parte* against the petitioner/defendant and filed the Execution Petition for execution of the said decree and recovery of the decree debt by seeking arrest and detention of the JDr/defendant in civil prison. The JDr/defendant, who is contesting the Execution Petition by filing a counter, further filed two applications on the original side, that is, one for condonation of delay in seeking to set aside the *ex parte* decree; and, the other for setting aside the *ex parte* decree passed in the Original Suit. (Herein after referred to as 'the applications filed by the JDr/Defendant').

5. Learned counsel for the JDr/defendant submits as follows:

Both the Execution Petition and the applications filed by the JDr/defendant, which were coming up together were taken up, on 06.08.2018, for enquiry and hearing; however, the Court below, without posting/adjourning both the matters to a same date, adjourned the Execution Petition, which is part-heard, to 13.08.2018, and the applications of the JDr/defendant to 27.08.2018 despite the JDr/defendant reporting ready and requesting to take up the said applications for hearing and disposal in accordance with the procedure established by law. Thus, the trial Court is not taking up both the matters simultaneously. Indeed, in the interests of justice, the applications filed by the JDr/Defendant have to be taken up for hearing & disposal ahead of the enquiry in the Execution Petition. Therefore, this revision petition is filed requesting to give appropriate directions to the Court below for early disposal of the applications filed by the JDr/defendant on the original side.

6. As rightly pointed out, for no reason, the Court below separated both the matters, which were earlier being posted together and posted the Execution Petition and the applications filed by the JDr/Defendant to different dates. Having regard to the facts, submissions & events stated supra and as it is fairly stated that the JDr/defendant, to show the *bona fides*, is prepared to deposit Rs.1,00,000/- to the credit of the Execution Petition without prejudice to the rights and contentions of the JDr/defendant in the suit and the Execution Petition, this Court is satisfied that this revision petition can be disposed of with appropriate directions to the Court below.

7. Accordingly, the Civil Revision Petition is disposed of directing the Court below to proceed with the enquiry in the Execution Petition as well as the enquiry/hearing in the applications filed on the original side by the JDr/defendant simultaneously. It is made clear that after recording evidence in one matter, the learned Judge shall withhold the order in that one matter till the recording of evidence, if any, and the hearing is completed in the other matter. Thereafter, the learned Judge shall simultaneously dispose of both the Execution Petition and the applications filed by the JDr/Defendant on the same day by two separate orders taking care that the order in one matter/proceeding is not based on the evidence recorded in the other matter. It is needless to state that JDr/Defendant, as undertaken before this Court, shall deposit Rs.1,00,000/- to the credit of the above Execution Proceedings forthwith and, in any event within three weeks from the date of receipt of a copy of this order, however, without prejudice to his rights and contentions.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

Date: 17th August, 2018

Note: Issue C.C. by 21.08.2018.

(B/o.)

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