

HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.781 OF 2011

ORDER:

Challenging the order dated 04-03-2011 in E.A.No.563 of 2010 in E.P.No.71 of 2010 in O.S.No.145 of 2005 passed by the Additional Senior Civil Judge, Eluru, allowing the petition filed by the respondents 1 and 2 for providing police aid for execution of the delivery warrant by Ameen, the present revision is filed.

In this case, the respondents 1 and 2 obtained exparte decree for recovery of possession in the suit and thereafter filed EP No.71 of 2010 for delivery of property and delivery warrant was issued. The petitioner herein obstructed or objected the delivery of possession of the property. Therefore, respondents 1 and 2 filed petition under Order 21 Rule 97 read with Sections Order 21 Rule 101 of CPC for removal of obstructions by providing police aid for execution of delivery warrant by Ameen. It is the case of the petitioner that he filed I.A.No.967 of 2010 to condone the delay of 1253 days in filing the petition under Order 9 Rule-13 CPC and also he filed E.A.No.564 of 2010 for grant of stay under Order 21 Rule 26, which was dismissed for default. Again the petitioner filed application for restoration of order in E.A.No.564 of 2010 and it is pending for adjudication before the Court below. Admittedly the decree for delivery of property is not set aside and delay condonation petition and petition filed under Order 9 Rule 9 CPC is pending for adjudication. The petition filed under Order 21 Rule 26 C.P.C. was filed for stay of execution proceedings before the Executing Court, but it was dismissed for default. Conveniently the petitioner filed application for restoration of E.A.No.564 of 2010 by setting aside default order and it was pending for adjudication by the Court below. There is no stay and nothing prevents to provide police aid to effect delivery of possession of the property. Accordingly, the Court below

passed order on 04-03-2011 providing police aid for removing obstructions/ objections for delivery of property by Court Ameen. Aggrieved by the same, the present revision is filed.

Smt.Nimmagadda Revati, learned counsel for the respondents 1 and 2 argued and supported the order

Section 115 of C.P.C deals with revisional powers and this Court while exercising such power call for records from the Court, which is subordinate to the High Court, when Subordinate Court fails to exercise jurisdiction that vested on it or exercise jurisdiction not vested in it by law or exercised jurisdiction illegally or irregularly. But in the present case, there is no such ground raised in the entire revision to enable this Court to exercise jurisdiction under Section 115 C.P.C. Mere pendency of petition for restoration of E.A.No.564 of 2010 filed under Order 21 Rule 26 is of no avail and petition to condone delay of 1253 days in filing the petition to set aside the exparte order, is of no use. Thus, there was no stay as on today against execution of decree passed exparte. In the absence of stay or any order not to effect delivery of possession of property, the order passed by the Court below cannot be faulted and it is in accordance with law. Therefore, I find no ground to interfere with the order passed by the Court below to exercise jurisdiction under Section 115 C.P.C. However, the Executing Court and the Court below are directed to dispose of the applications if any pending before them within one month from the date of receipt of copy of order.

With the above observations, the Civil Revision Petition is disposed of. In consequence, Miscellaneous Petitions, if any, pending in this revision petition shall stand dismissed.

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M. SATYANARAYANA MURTHY, J

