

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5445 of 2018

ORDER:

The revision petitioner is the decree holder and the respondent is the judgment debtor, who is no other than Special Deputy Collector, Land Acquisition, Telugu Ganga Project, Nellore.

Pursuant to the interim order in I.A.No.405 of 2016 in the pending reference under Section 18 of the Land Acquisition Act in LAOP.No.8 of 2015, for the non-payment of the award determined therein by the learned VII Additional District Judge, Gudur, E.P.No.64 of 2017 is filed under Order XXI Rule 46 CPC on 08.08.2017 with a prayer to attach the amount lying in the online account No.10889525262 of the Sub Registrar, Gudur, relating to stamp duty collection of the Department of Stamps and Registration of the Government of AP at the State Bank of India of Gudur Branch of SPSR Nellore District to the extent to satisfy the amount claimed in the execution petition by send for the same if any to the credit of the execution proceedings to satisfy to the extent of the interim award concerned. It is on contest by the impugned order dated 29.06.2018 the learned VII Additional District Judge, Gudur, dismissed the petition with observation that the interim award passed in IA.No.405 of 2016 dated 24.04.2017 is not a decree within the meaning of Section 2(2)

CPC nor the person executing it a decree holder within the meaning of Section 2(3) CPC and thereby it cannot be said the decree holder obtained any decree for execution to file application and thereby the execution petition is not maintainable and not entitled to attach the amount lying as sought for.

The trial Court missed the scope of Order XII CPC particularly Order XII Rule 6 CPC of passing judgment and drafting of decree therefrom based on admissions and once that is the judgment from which the decree to be drawn up within the meaning of Section 2(2) CPC and 2(9) CPC, it went wrong in saying the interim decree passed is as if not a decree within the meaning of Section 2(2) CPC. Thus the dismissal order is basically unsustainable.

No doubt it is one of the contentions in the course of hearing the revision that Order XXI Rule 46 including Clause (3) has no application. It is made clear a wrong quoting of provision no way fatal once it is Order XXI Rule 52 CPC that is applicable.

Having regard to the above, this Civil Revision Petition is allowed and the impugned dismissal order is set aside and the EP.No.64 of 2017 is restored to the file of learned VII Additional District Judge, Gudur, with a direction to enquire into the matter by passing necessary orders. The attachment

if at all vacated is to be revived forthwith by fresh order of attachment. The learned Judge shall make every endeavour for early disposal subject to other priorities. No costs.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 26.09.2018
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