

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5354, 5382, 5389, 5439, 5479, 5490, 5546, 5547, 5548, 5561, 5596, 5598, 5599, 5600, 5604, 5612, 5626, 5627, 5631, 5633, 5637, 5638, 5641, 5645, 5647 and 5659 of 2018

COMMON ORDER:

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

2. 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 L.A.O.P.No.8 of 2015, for the non-payment of the award determined therein by the learned VII Additional District Judge, Gudur, E.P.Nos.60 & 58 of 2017 on 07.08.2018, E.P.No.57 of 2017 on 29.07.2018, E.P.Nos.62, 65, 61, 66, 67, 69 & 70 of 2017 on 08.08.2017, E.P.Nos.119, 96, 89, 115, 95, 88, 91, 90, 120, 92 & 87 of 2017 on 11.08.2017, E.P.Nos.84, 83 & 86 of 2017 on 10.08.2017 and E.P.Nos.72 & 79 of 2017 on 09.08.2018 are filed under Order XXI Rule 11 r/w Rule 46 CPC 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 petitions 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 orders

dated 29.06.2018 the learned VII Additional District Judge, Gudur, dismissed the petitions 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.

3. 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.

4. No doubt, it is one of the contentions in the course of hearing the revisions 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.

5. Having regard to the above, these Civil Revision Petitions are allowed and the impugned dismissal orders are set aside and the E.P.Nos.60, 57, 62, 65, 58, 61, 119, 96, 66, 84, 89, 115, 72, 95, 88, 91, 67, 90, 69, 83, 120, 92, 70, 86, 79 and 87 of 2017 are 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 revision petitioners are given liberty to file order copy before the learned Court with memo to comply with the direction by the lower Court.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

28th September 2018.

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Dr. B. SIVA SANKARA RAO, J

