

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 5556 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/appellant/ defendant aggrieved by the docket order, dated 20.08.2018, of the learned III Additional District Judge, [holding Full Additional Charge of I Additional District Judge] Ongole, passed in I.A.No.109 of 2018 in A.S.No.89 of 2018.

2. I have heard the submissions of Sri N.A. Ramachandra Murthy, learned counsel for the petitioner, and of Sri N. Sriram Murthy, learned counsel for the respondent.

3. I have perused the material record.

4. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

“The plaintiff/respondent herein filed O.S.No.117 of 2016 on the file of the Senior Civil Court, Chirala, for recovery of money based on promissory note. The said suit was decreed by the trial Court. Aggrieved thereof, the defendant/petitioner herein preferred A.S.No.89 of 2018 before the III Additional District Court, Ongole, on 25.04.2018. The Court below granted interim stay subject to deposit of costs. The said interim orders were granted till 11.06.2018. Thereafter, on a memo filed, on 24.07.2018, the said interim stay

orders were extended till 03.08.2018. Subsequently, the said stay orders were extended from time to time on the Memos filed by the petitioner/appellant. Be that as it may. On 20.08.2018, learned counsel for the petitioner/appellant filed a Memo seeking extension of the stay orders, which were in force. The said Memo was dismissed and the interim stay was vacated.”

5. The order of the Court below, which is now impugned, verbatim reads as follows:

“Counsel for appellant filed Stay extension Memo and is dismissed.
Interim stay is vacated. For hearing; call on 27.8.2018.”

6. Learned counsel for the petitioner/appellant submits that the impugned order is passed without giving an opportunity of hearing to the petitioner/appellant and that the lower appellate Court ought to have heard the learned counsel appearing for the appellant before passing the said order on the Memo and that the impugned order is not a reasoned order and is unsustainable.

7. Learned counsel for the respondent/plaintiff submitted that in view of the reasons assigned in the judgment of the trial Court, which is impugned in the Appeal Suit pending before the lower appellate Court, and as the appellant has no case in the Appeal Suit, the impugned order is justified and that the lower appellate Court is correct in not extending the interim stay orders.

8. I have given earnest consideration to the facts and submissions. Since the afore-stated Appeal Suit is filed against a decree for money,

the lower appellate Court ought to have imposed appropriate terms and conditions as contemplated under law while granting interim stay or while further extending interim stay orders. However, initially, the lower appellate Court granted interim stay subject to condition of the defendant/appellant depositing the costs, which are taxed in the decree of the trial Court; but, no further directions were given as regards deposit of a part of the decree debt. Be that as it may.

9. As the order impugned on the face of it manifests that it is hopelessly unsustainable, this Court is of the considered view that this Civil Revision Petition can be allowed and the impugned order be set aside subject to certain observations.

10. Accordingly, the Civil Revision Petition is allowed and the impugned order vacating the interim stay orders is set aside subject to the condition of the petitioner/appellant depositing Rs.1,00,000/- (Rupees one lakh only), within five weeks from the date of receipt of a copy of this order, to the credit of the suit before the trial Court or in the alternative to the credit of the E.P.No.13 of 2018 in O.S.No.117 of 2016 on the file of the Court of the learned Senior Civil Judge, Chirala, said to have been filed by the respondent. On such deposit, there shall be stay of execution of the decree impugned in A.S.No.89 of 2018 till the lower appellate Court passes appropriate final orders in I.A.No.109 of 2018 filed by the petitioner/appellant seeking stay of execution of the decree passed by the trial Court. Since it is stated that the Executing Court has already ordered attachment in the above

said E.P., it is made clear that the said order of attachment shall remain in abeyance till six weeks from the date of receipt of a copy of this order. In the event of deposit of the money by the petitioner/appellant as directed supra, the attachment order passed in the above said EP shall stand vacated. It is further made clear that on failure of the petitioner/appellant to make the deposit of money as directed supra, the order of attachment passed in the above said EP shall stand revived and shall be in force as per the Warrant of attachment issued in the Execution Petition. This order shall not preclude the Court below from finally disposing of the I.A.No.109 of 2018 on its merit and passing appropriate orders, as per procedure established by law.

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: 25.09.2018

va