

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition Nos.6675 and 6679 of 2018

Common Order:

Aggrieved by an order passed by the Executing Court granting stay of execution till the disposal of an application for stay before the First Appellate Court, the decree-holders have come up with the above revisions.

2. Heard Mr. S.Balchand, learned counsel for the petitioners.

3. It appears that as against an order passed in an interlocutory application granting a mandatory injunction, the judgment debtors have filed a statutory appeal. But the appeal appears to have been filed beyond the period of limitation. Therefore, a condone delay application is still pending.

4. In the meantime, persons in whose favour orders of mandatory injunction were granted pending suit, sought to execute the order by filing an execution petition. In the E.P., the judgment debtors filed an application under Order XXI, Rule 29 CPC for stay. The stay has been granted by the Executing Court, forcing the decree-holders to come up with the above revisions.

5. The contention of the learned counsel for the petitioners is that under Order XLI, Rule 5(2) CPC, a stay can be granted only till the expiry of the time allowed for filing an appeal and that after the expiry of the time in filing the

appeal and especially when an appeal along with the condone delay petition is pending before the Appellate Court, the Court below could not have granted interim stay of execution.

6. But the case on hand actually falls under Order XXI, Rule 29 CPC. Order XXI, Rule 29 CPC reads as follows:

“29. Stay of execution pending suit between decree-holder and judgment-debtor.—Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.”

7. The provisions of Order XXI, Rule 29 CPC, where a power is conferred upon the Executing Court, are completely different from the powers available under Order XLI, Rule 5(2) CPC. Therefore, the rights of a person in a regular first appeal, cannot be defeated. Hence, the appropriate course in such cases is to direct the Appellate Court to dispose of the stay petition within a timeframe so that the decree-holders as well as the judgment debtors know where they stand.

8. Hence, the revisions are disposed of, directing the Chief Judge, City Civil Court, Hyderabad, to dispose of the stay applications pending in C.M.A.SR.Nos.10900/2018 and 10903/2018 within a period of four weeks from the date of

receipt of a copy of this order. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

16th November, 2018.
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