

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.6806 of 2018

ORDER :

Pending notice before admission ordered on 23.11.2018 returnable by four weeks including by personal service, no proof of service so far filed and it is the submission of the learned counsel for the petitioner-judgment debtor that an interim order is required and it requires to be heard.

2. Heard the learned counsel for petitioner, the learned counsel for the respondents at length and perused the material on record.

3. One of the contentions are that an *ex parte* decree was obtained behind back of the petitioner-judgment debtor by the plaintiff having settled the matter in the cheque bouncing case covered by C.C.No.305 of 2013 and its withdrawal consequent thereto dated 28.02.2014 from the file of the Judicial Magistrate of First Class at Madhira and the suit transaction relates to the cheque bouncing case as the plaint filed in O.S.No.62 of 2014 before withdrawal of the cheque bouncing case dated 21.02.2014 at Paragraph No.4 refers about filing of cheque bouncing case in C.C.No.305 of 2013. From its

perusal there is no dispute about the cheque bouncing case filed and the same was pending as on the date of filing of the suit and so far as the alleged adjustment subsequently from withdrawal of the C.C. is concerned, the docket proceedings of the learned Magistrate in C.C.No.305 of 2013 dated 28.02.2014 reads as follows:

“Both parties present. The counsel for the complainant not pressed the complaint stating that they compromised the matter outside the court. The same is recorded. Complaint is dismissed as not pressed. Accused acquitted.”

It speaks about the compromise outside the Court and not about the payment of amounts. Once such is the case, the suit was continued even after withdrawal of the cheque bouncing case the defendant did not choose to contest and if at all the *ex parte* decree from which he is aggrieved he cannot oppose the execution, but for to file an application on the original side to set aside the *ex parte* decree and obtain stay if any.

4. Having regard to the above, the *prima facie* from dismissal of E.A.No.31 of 2018 by the lower Court of the application to stay the E.P. proceedings, there is nothing to interfere for no merits. Thereby, this Civil Revision Petition is disposed of giving such liberty for nothing to admit or keep it pending.

Miscellaneous petitions pending, if any, shall stand closed.

21.12.2018
MVA

Dr. B. SIVA SANKARA RAO, J