

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 7398 of 2017

ORDER:

The present application came to be filed under Section 115 of the Code of Civil Procedure assailing the order in E.P.No. 81 of 2016 in O.S.No. 15 of 1993, on the file of the Principal Senior Civil Judge, Kakinada.

2. The facts in issue show that the E.P came to be filed for attachment and sale of Execution Petition Schedule Property for realization of decretal amount due to the decree holders from the respondent. The E.P. filed under Order 21 Clause (1) of the Code of Civil Procedure shows that the decree amount as Rs.35,000/-, interest @ 12 ½% on the said amount from 16.04.1987 to 22.10.1993 as Rs.28,485/-, and interest @ 6% on Rs.35,000/- from 22.10.1993 to 22.08.2014 as Rs.43,732/-. The total amount comes to Rs.1,07,217/-. An amount of Rs.37,900/- was said to have been paid by the petitioners in two instalments. After deducting the said amount, the total amount in the E.P. was calculated at Rs.69,317/-.

3. A counter came to be filed in the said E.P stating that the calculations made are incorrect and it was pleaded that an amount of Rs.37,900/-, paid in two instalments was on 04.07.1994 and 26.07.1994, and the said amount should have been deducted before calculating the balance amount to be paid. It is stated that

the method and manner of calculation is made is incorrect and as such, the order under challenge requires interference. However, the trial court, without going into the said aspect, dismissed the E.P. Assailing the same, the present CRP is filed.

4. Reiterating the contentions made before the trial court, Mr. Subba Reddy, learned counsel for the petitioners would submit that the material on record amply shows that the procedure adopted in calculating the decree amount to be paid, is totally incorrect. He further submits that though this plea has been specifically raised in the counter, the same was not considered by the trial court.

5. Mr. Durga Prasad, the learned counsel for the respondent submits that it would be just and proper if the matter is remanded back to the trial court for calculation of the decree amount in accordance with the averments made in the counter filed in the E.P.

6. Having regard to the rival submissions made and as the plea is with regard to the incorrectness in the calculation of the decree amount, which was without taking into consideration the money paid, the order under challenge is set aside and the matter is remanded back to the trial court to consider the plea taken by the petitioners with regard to the payment made in July, 1994, after giving due opportunity to all concerned. It is needless to mention that the petitioners herein shall also file their calculation memo along with the necessary documents, so as to enable the trial court to come to a just conclusion.

7. It is also to be noted here that pursuant to the interim order passed by this Court, an amount of Rs.25,000/- was said to have been paid by the petitioners by way of Treasury Challan No.0000058186, dated 30.01.2018. The trial court shall take into consideration the said amount also while determining the quantum of the amount to be paid in the E.P. The trial court shall also take steps to dispose of the E.P. as early as possible, preferably within a period of eight to twelve weeks from the date of receipt of the order, in accordance with law.

8. Accordingly, the C.R.P is allowed. Miscellaneous petitions pending, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

02.02.2018
DMG