

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6896 of 2017

ORDER:

This civil revision petition is filed under Section 115 of Civil Procedure Code (for short "C.P.C.") challenging the order dated 03.10.2017 passed in E.P.No.168 of 2011 in O.S.No.381 of 2007 by the III Additional Senior Civil Judge, Vijayawada making the attachment absolute.

The petitioner herein on receipt of notice in E.P.No.168 of 2011 filed a petition to set aside the exparte decree along with delay condonation petition, but those petitions were dismissed by the trial Court. Aggrieved by the said order, the petitioner herein preferred revision, which is pending before this Court for adjudication.

In the execution petition, the decree holder sought attachment of property and sell the same under Order XXI Rule 54, 64 and 66 of C.P.C. The objection raised by the petitioner herein by filing counter is that the respondent herein obtained exparte decree based on forged document and the petitioner is taking steps to set aside the exparte decree. The Court overruled the objection on the ground that the decree was passed on 06.09.2007 and the execution petition was filed in the April 2011, and the judgment debtor seems to have not taken any steps to set aside the exparte decree and no details were furnished. Therefore, in the absence of any stay, the Court can proceed further in

accordance with law and rejected the relief claimed by the petitioner herein.

Aggrieved by the order of trial Court, the present revision is filed on the sole ground that the order impugned in this revision if allowed to sustain, would amount to miscarriage of justice and eventually result in irreparable loss and hardship to the petitioner herein and the Court without considering the contention of the petitioner herein rejected the objection without any basis and prayed to set aside the same.

Learned counsel for the petitioner, during hearing, contended that aggrieved by the exparte decree, petitioner filed petition to set aside the exparte decree along with a delay condonation petition, but the said petition was dismissed and the matter is carried to this Court by revision under Article 227 of the Constitution of India and it is pending for adjudication. Therefore, during pendency of revision, making attachment absolute is an illegality and requested to set aside the order.

There is no dispute with regard to decree passed against the petitioner herein and the petition filed for setting aside the decree was dismissed. In view of dismissal of the said petition, the petitioner filed revision before this Court and it is pending for adjudication. But no stay of further proceedings in execution petition is granted by this Court and in the absence of any stay, there is no impediment against the trial Court to proceed further in the execution petition. Therefore, the trial Court is bound to make attachment absolute as there is no tenable objection except filing of petition to set aside the exparte decree along with the delay

condonation petition. The ground urged by the petitioner is not sufficient to set aside the order passed by the Court since the filing of revision and its pendency would not operate as automatic stay. According to Section 115 (3) of C.P.C., a revision shall not operate as a stay or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court. But it is not known whether the revision filed before this Court is under Section 115 of C.P.C. or under Article 227 of Constitution of India, but the same principle is applicable whether it is a revision under Section 115 of C.P.C. or under Article 227 of the Constitution of India. Hence, I find no ground to set aside the order passed by the Court below by exercising power under Section 115 (1) of C.P.C. as such power can be exercised only in three circumstances, which are as follows:

Section 115 Revision: (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears –

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

The grounds urged in the revision do not fall within any of the three conditions referred supra. Consequently, the revision is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

16.11.2018
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