

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.585 and 591 of 2019

COMMON ORDER:

These two Revisions arise out of the same proceeding between the same parties. Therefore they are being disposed of by this common order.

2. The petitioner herein is 1st defendant/1st J.Dr. in O.S.No.2279 of 2003 on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad.

3. The 1st respondent filed suit against petitioner and 3 others for recovery of a sum of Rs.79,900/- together with interest @ 12% p.a. from the date of suit till realisation from the petitioner and other defendants basing on a chit transaction contracted by petitioner with 1st respondent and costs.

4. Petitioner as well as defendant Nos.2 to 3 remained *ex parte*. The 4th respondent contested the suit and the suit came to be decreed on 28-06-2007 with costs.

5. The 1st respondent/Decree Holder filed E.P.No.45 of 2016 to attach the moveable properties of petitioner and sell the same invoking Order XXI Rule 43, 64 and 66 of C.P.C. In the E.P., it also sought for deduction of a sum of Rs.53,597/-, which was recovered from J.Drs. 2 and 3.

6. Petitioner filed counter in that E.P. contending that E.P.No.315 of 2008 was earlier filed and certain recoveries were made from the salaries of J.Drs.2 and 4 and thereafter the E.P. was dismissed on 07-05-2010. He contended that Rs.79,900/- was recovered from J.Drs.2 and 3. He disputed the calculation made regarding interest. He also stated that the Decree Holder had seized Maruti Car belonging to the Decree Holder (See. J.Dr.-1) and the Decree Holder failed to adjust the sale proceeds in the account of the suit proceedings. He also contended that applications were filed to set aside the *ex parte* decree and judgment and they were pending.

7. He then filed E.A.No.77 of 2017 under Order XXI Rule 26 C.P.C.to stay all further proceedings in E.P.No.45 of 2016 pending disposal of I.As. filed for setting aside the *ex parte* decree, and E.A.No.78 of 2017 to reopen the E.P. for advancement of arguments of the pending I.As. and to set aside the *ex parte* orders.

8. Counter-affidavits were filed by 1st respondent in both these applications. The 1st respondent contended that these applications were not maintainable and were filed only to evade payment and further delay the proceedings without explaining reasons for grant of relief to stay the E.P. proceedings. The plea of wrong calculation in the E.P. is denied. It was also contended that there is no valid explanation to condone the delay in seeking to reopen the E.P.

9. By separate orders dt.13-02-2019, both the E.As. were dismissed. The Court below observed that whatever deductions were

made out of the salaries of J.Drs. 2 and 4 were shown in the E.P. by deducting Rs.53,597/-. It observed that though petitioner pleaded that he suffered an accident in the year 2008 which resulted in multiple fractures and he had gone to Kerala for Ayurveda treatment to strengthen the muscles, no document is filed to support the said version. It also held that there is no evidence of any application filed to set aside the *ex parte* decree because the petitioner did not mention any I.A. number or its stage.

10. Assailing the same, these Revisions are filed.

11. Admittedly, *ex parte* decree in the suit was passed on 28-06-2007. Though petitioner claims that he was going to take appropriate legal steps to have them set aside in the counter filed by him, there is no evidence of such steps having been taken. The plea of petitioner that he suffered an accident in the year 2008 causing multiple fractures to him, is also not borne out by any record.

12. The further plea of the petitioner that there was a Maruthi car which was seized by the 1st respondent, but the 1st respondent did not account for the sale proceedings of the said car, cannot be taken into account because no argument was advanced by the petitioner in the suit on the said basis.

13. The further pleading that the proceedings in E.P.No.45 of 2016 ought to be stayed pending disposal of I.As. to set aside the *ex parte* decree cannot be allowed because there is no evidence of any filing of such I.As. at all.

14. Therefore, I do not find any merits in these Revisions. However, the stand taken by petitioner in the counter filed by him in E.P.No.45 of 2016 as regards amounts recovered from J.Drs. 2 and 3 already, shall be considered by the Court below while disposing of the E.P. It is made clear that no view has been expressed thereon by this Court in this order.

15. Accordingly, these Civil Revision Petitions are dismissed. No costs.

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-03-2019
Vsv

