

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1136 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.27-03-2019 in E.P.No.14 of 2015 in W.P.No.10743 of 2005 passed by IX Additional Chief Judge, City Civil Court, Hyderabad ordering attachment of moveable properties of the petitioner i.e. the Chief Engineer, Transmission, A.P.Transco, Vidyutsoudha, Hyderabad.

2. The 1st respondent in the Revision, which is a Company registered under the Companies Act, 1956, filed W.P.No.10743 of 2005 before this Court to set aside order dt.23-03-2005 of the petitioner by impleading the Commissioner, Commercial Taxes Department seeking a direction for reimbursement of differential Sales Tax amount of Rs.31.55 lakhs to it.

3. The said Writ Petition was allowed on 26-07-2007 by a Division Bench of this Court and the petitioner was directed to refund the said amount to the 1st respondent within four (04) weeks.

4. Petitioner questioned it in S.L.P. (Civil) No.18627 of 2007 which was dismissed on 12-10-2007.

5. Petitioner then filed W.P.M.P.No.2779 of 2008 in W.P.No.10743 of 2005 to recall the order dt.26-07-2007 in W.P.No.10743 of 2005 and to dismiss the said Writ Petition.

6. A Division Bench of this Court dismissed W.P.M.P.No.2779 of 2008 in W.P.No.10743 of 2005 on 21-09-2011 terming it as an abuse of process of law and imposed costs of Rs.500/-.

7. The 1st respondent filed C.C.No.2035 of 2013 under Section 10 and 12 of the Contempt of Courts Act, 1971 to punish the petitioner for violating the order dt.26-07-2007 in W.P.No.10743 of 2005.

8. On 17-12-2013, the said Contempt Case was dismissed giving liberty to 1st respondent to take steps in accordance with law.

9. Thereafter E.P.No.14 of 2015 was filed by 1st respondent before the IX Additional Chief Judge, City Civil Court, Hyderabad for execution of the order dt.26-07-2007 in W.P.No.10743 of 2005.

10. The said E.P. was filed invoking Order XXI Rule 43 and 64 of C.P.C. for attachment of movables of the petitioner. It was allowed on 27-03-2019 by the said Court.

11. Before the Court below, petitioner contended that Order XXI C.P.C. cannot be invoked to orders passed in Writ Petitions as orders passed therein are not “decrees”. It is contended that the Civil Court cannot execute the order dt.26-07-2007 in W.P.No.10743 of 2005.

12. The Court below rejected the said contention in the impugned order relying on judgment in **Guddi Agamaiah alias Gunddi Agamaiah and others Vs. The Military Estate Officer, Andhra Pradesh Circle, Secunderabad and another**¹. It observed that when a writ of mandamus is ordered, it is executable by analogy of a decree under Section 2(2) C.P.C. and it is enforceable as if it is a decree of the Civil Court.

13. Assailing the same, this Revision is filed.

14. Learned counsel for the petitioner reiterated the said contention raised in the Court below.

15. Rule 24 of the Writ Proceedings Rules, 1977 framed by the A.P.High Court which have been adopted by the Telangana High Court states:

“All other rules relating to causes and matters coming before the Original Side and Appellate Side of the High court and the provisions of the Code of Civil Procedure, 1908 will apply to the Writ Petitions and the Writ Appeals in so far as they are not inconsistent with these rules.”

16. The said Rule was interpreted in **G.Agamaiah** (1 supra) by this Court and it held :

“The question still remains is whether the party is bereft to beneficial mode of normal execution of the writ of mandamus etc. In this regard the Rules made by this Court have to be gleaned through.

No doubt rule 23 of the Rules provides for execution of costs awarded by this court in a writ petition or a writ appeal on

¹ 1986(2) ALT 582

transmission to the Court having jurisdiction to execute it under Rule 23 (a). The Lower Court placing reliance thereon has held that except with regard to costs, there is no power for execution of the orders of this court issued under Article 226 of the Constitution in any other mode.

I am constrained to observe that the lower court has betrayed its ignorance of Rule 24 of the Rules which postulates thus:

"All other rules relating to causes and matters coming before the original side and Appellate side of the High Court and the provisions of the Code of Civil Procedure 1908 will apply to the writ petitions and the writ appeals in so far as they are not inconsistent with the Rules."

A reading of Rule 24 adumbrates and amplifies its scope and sweep. In addition to the applicability to the Rules, the other Rules in vogue on the original side, Appellate side of this Court the provisions of the Code of Civil Procedure 1908. So far as they are not inconsistent would apply to the Writ proceedings. Execution is an integral follow up process of the court to enforce the relief granted by this Court under Article 226 of the Constitution. Section 39 C.P.C. provides for the transfer of decree for execution to another court of competent jurisdiction against whom the decree is passed and who actually and voluntarily resides or carries on business or personally works for gain within the local limits of the jurisdiction of such court. Order 21 Rule 35(1) C.P.C. provides for execution of decree for immovable property where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf and, if necessary, by removing any person bound by the decree who refuses to vacate the property. For disobedience of an Order, Order 21 Rule 32 provides the mode also. No doubt, in terms of section 2(b), C.P.C. Decree" has been defined as "the formal expression of an adjudication which, so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be

either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default

*No doubt, the decree in its strict construction would apply to the suits, but the proceedings under Article 226 of the Constitution are Civil Proceedings as held by the Supreme Court in **Narayan Row vs. Ishwarlal**² and the writ of mandamus is a constitutional remedy which stands on a higher pedestal than a formal expression engrafted and adjudicated by a Civil Court within the meaning of section 2(2) C.P.C. When this court has issued a mandamus directing the party to deliver possession of the lands, it is an executable order by analogy of a decree under section 2(2) of the Code and it is enforceable as if it is a decree of the Civil Court under Order 21 Rule 35 or Order 21 Rule 32 of the C. P.C. To this extent, there is no inconsistency between the rules and the code. ... In my view Rule 24 of the Rules is of wide amplitude to encompass in its ambit the procedure for execution in the Code to make avail for execution of the writs or orders or direction issued by this Court under Article 226 of the Constitution. Contempt proceedings are not in supersession or substitution of the remedy given to the party under the Code. It is an additional remedy, As stated earlier in contempt proceedings, the party is instrumental to bring the disobedience by the respondent to the notice of the Court and the Court may decline to convict the contemnor. But in an execution under the Code, the Court is left with no discretion to dismiss the E.P. except when it is barred by limitation. Thus it is a substantive remedy available to the petitioner. Therefore the writ of mandamus for delivery of possession is executable under Order 21 Rule 35 or Order 21 Rule 32 C.P.C. Accordingly I hold that the lower court has committed a grievous error of jurisdiction in refusing to execute the decree”.*

² MANU/SC/0160/1965 : AIR 1965 SC 1818

17. This legal position is not disputed by the learned counsel for petitioner.

18. Therefore, when this Court had issued a Writ of Mandamus on 26-07-2007 to the petitioner to refund the amount paid by the 1st respondent towards differential Sales Tax with interest @ 12% p.a., it is an executable order by analogy of a decree under Section 2(2) of the C.P.C. and it is enforceable as if it is a decree under Order XXI C.P.C.

19. It is tragic that though the said demand dt.23-03-2005 made by the petitioner was set aside on 26-07-2007 in the W.P.No.10743 of 2005, and S.L.P. (Civil) No.18627 of 2007 against it was dismissed on 12-10-2007, and Review Petition W.P.M.P.No.2779 of 2008 was dismissed on 21-09-2011, it is an abuse of process of Court for the petitioner to raise the above plea and try to stall the execution of the order passed by this Court on 26-07-2007 in W.P.No.10743 of 2005.

20. Accordingly, the Revision is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to be paid to the 1st respondent by the petitioner.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-06-2019

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