

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2722 of 2019

ORDER:

This civil revision petition is filed by the petitioner under Article 227 of the Constitution of India, challenging the docket order dated 01.10.2019 passed in claim petition (SR) No.5003 of 2019 in O.S.No.148 of 2015 by the learned V Senior Civil Judge, City Civil Court, Hyderabad, wherein the said claim petition was returned on the ground that the Execution Petition was not filed in O.S.No.148 of 2015.

2. Heard the learned counsel for the revision petitioner and perused the record.

3. Learned counsel for the revision petitioner would contend that the impugned docket order dated 01.10.2019 passed by the Court below is erroneous. It is contended that the revision petitioner is a tenant of shops/mulgies admeasuring 740 sq.feet, ground floor bearing Municipal No.1-8-539 & 539/1/A, situated at Chikkadpally, Hyderabad, wherein he is carrying on business under the name and style of "Pooja Electronics". The 1st respondent herein/plaintiff obtained fraudulent decree in O.S.No.148 of 2015 for possession against the defendant in O.S.No.148 of 2015. It is submitted that earlier the revision petitioner filed I.A.No.528 of 2017 seeking to implead him as defendant No.2 in O.S.No.148 of 2015 on the file of V Senior Civil Judge, City Civil Court, Hyderabad, but the said I.A was dismissed on 24.01.2018. Except filing the present claim petition under Order XXI Rule 97, 98, 101 to 105 of Code of Civil

Procedure, 1908 ('C.P.C'), there is no other remedy available to the revision petitioner. Therefore, the Court below ought to have entertained the subject claim petition as contemplated under Order XXI Rule 97 to 101 and 105 of C.P.C. It is also contended that in the course of execution of decree in O.S.No.148 of 2015, if the petitioner is dispossessed, it causes huge loss to him. Further, an order of warrant of possession can be issued in terms of Order XXI Rule 22 CPC, without notice to the revision petitioner and ultimately prayed to allow the revision petition as prayed for.

4. Admittedly, no execution proceedings are carried out by the 1st respondent/plaintiff/decreed holder in O.S.No.148 of 2015. The Civil Revision Petition No.2253 of 2018 filed by the revision petitioner herein challenging the order dated 24.01.2018 passed in I.A.No.528 of 2017 in O.S.No.148 of 2015 by the V Senior Civil Judge, City Civil Court, Hyderabad, was dismissed by this Court on 15.07.2019, on the observation that the petitioner has remedies under Order XXI Rule 97 and 99 of CPC to resist execution in the event the decree in O.S.No.148 of 2015 is sought to be executed against the petitioner.

5. In the given circumstances, it is appropriate to state that O.S.No.148 of 2015 was disposed of by the Court below and hence, no Interlocutory Application can be entertained therein by the third party to the suit. Order XXI Rule 97 to 101 and 105 CPC contemplates filing of claim petition in execution proceedings but not in the Original Suit. Therefore, the Court below is justified in not entertaining the claim petition on the

ground that execution proceedings are not yet initiated by the 1st respondent herein/plaintiff/decreed holder against the judgment and decree dated 22.07.2019 passed in O.S.No.148 of 2015 by the V Senior Civil Judge, City Civil Court, Hyderabad. There is nothing to take a different view. No perversity or illegality is found in the impugned order. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

6. Accordingly, this Civil Revision Petition is dismissed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Date: 29.11.2019
scs

Dr. SHAMEEM AKTHER, J

