

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

I.A.No.1 of 2018 in C.R.P.No.2508 of 2017

&

C.R.P.No.5057 of 2018

COMMON ORDER:

I.A.No.1 of 2018 in C.R.P.No.2508 of 2017 is filed by petitioners in O.S.No.97 of 1983 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad to review the order dt.24-07-2017 in C.R.P.No.2508 of 2017.

2. It is not in dispute that the suit was decreed on 09-07-1997. Thereafter petitioners filed I.A.No.372 of 1998 for passing of final decree and for appointment of Commissioner and I.A.No.373 of 1998 for determination of mesne profits.

3. In the meantime, defendant Nos.1 and 2 filed C.C.C.A.No.180 of 1997 before this Court, which was dismissed on 03-10-2003 and the said judgment was also confirmed in S.L.P. (Civil) No.11371/2003 preferred by defendant Nos.1 and 2.

4. Thereafter I.A.No.373 of 1998 wherein the petitioners sought mesne profits was allowed on 23-04-2004.

5. Defendant Nos.1 and 2 filed C.C.C.A.No.193 of 2005 before this Court challenging the said order, and on 27-09-2005 in C.C.C.A.M.P.No.646 of 2005, this Court granted interim stay subject to deposit of 50% of the mesne profits within 8 weeks and on such deposit, petitioners were permitted to withdraw the same.

6. Later, on 19-12-2005, the said order was clarified and it was stated that if the appellants in C.C.C.A. did not comply with the order dt.27-09-2005, the petitioners are at liberty to proceed with execution.

7. On 10-08-2005, petitioners filed E.P.No.1 of 2005 for realization of the mesne profits by attachment and sale of immoveable properties belonging to defendant Nos.1 and 2.

8. It is important to note that 'J' schedule property in the suit was not the subject matter of the said E.P.

9. Later final decree was passed on 27-11-2008 in I.A.No.372 of 1998.

10. Later there was a compromise settlement wherein the petitioners gave up mesne profits and compromise memo was filed in I.A.No.373 of 1998, on the basis of the same, E.P.No.1 of 2005 was closed on 23-06-2009.

11. However, when defendant Nos.1 and 2 did not fulfill the conditions of compromise, petitioners filed E.A.No.3 of 2017 in E.P.No.1 of 2005 to revive the E.P., which had been closed on 23-06-2009.

12. On 09-04-2012, respondent Nos.1 to 3 in C.R.P. (third party claimants) filed I.A.No.225 of 2015 in O.S.No.97 of 1983 under Order XXI Rule 97 and 99 C.P.C. claiming Item No.4 of 'J' schedule property.

13. Petitioners then filed I.A.No.99 of 2016 to dismiss I.A.No.225 of 2015 in O.S.No.97 of 1983.

14. On 03-05-2017, I.A.No.99 of 2016 was dismissed by the trial Court.

15. Petitioners then filed C.R.P.No.2508 of 2017 before this Court on 24-07-2017. In the said C.R.P., it was the contention of the petitioners that application under Order XXI Rule 97 C.P.C. filed by the third parties, who are respondent Nos.1 to 3 in the Revision, was not maintainable and that on the original side in the suit they cannot be filed and they can only be filed in Execution proceedings.

16. This Court, in its order dt.24-07-2017 while dismissing the said C.R.P. noted that as on the date of its order, E.P.No.1 of 2005 was still closed and E.A.No.3 of 2017 to revive it was still pending before the Executing Court. It went on to say that respondent Nos.1 to 3 in C.R.P./third party claimants can file an application in E.P.No.1 of 2005 raising objection, resistance or obstruction to delivery of possession of the property under Order XXI Rule 97, 98 and 101 C.P.C. and opportunity was given to the petitioners to file appropriate application before the original Court where the I.A. is pending, to file application for conversion of I.A. into E.A.

17. Taking cue from this order, I.A.No.398 of 2017 was filed by respondent Nos.1 to 3/claim petitioners to convert the application of petitioners i.e., I.A.No.225 of 2015 as E.A. in E.P.No.1 of 2005.

18. In view of the orders passed by this Court on 24-07-2017 in C.R.P.No.2508 of 2017, the Court below by order dt.08-08-2018 allowed I.A.No.398 of 2017 and directed the Office to give number as 'E.A.' to I.A.No.225 of 2015 in E.P.No.1 of 2005 though it noted that E.P.No.1 of 2005 stands closed and is not yet restored and is not pending as on date.

19. Assailing the said order dt.08-08-2018 in I.A.No.398 of 2017, petitioners filed C.R.P.No.5057 of 2018.

20. Heard Sri J.Prabhakar, learned counsel for petitioners and Sri Kishore Rai, learned counsel for respondent Nos.1 to 3/claim petitioners.

21. No doubt there is a delay in filing Review petition I.A.No.1 of 2018 in C.R.P.No.2508 of 2017, but on 24-10-2018, while considering the same, this Court observed that there is no limitation for filing a Revision under Article 227 of the Constitution of India against an order, but however directed the Registry to number the petition subject to objection as it can be considered at an appropriate stage during hearing. It also granted stay of further proceedings in the suit.

22. Learned counsel for petitioners contended that when E.P.No.1 of 2005 is not yet restored to the file of the Executing Court and E.A.No.3 of 2007 to revive the said E.P. is still pending, this Court as well as the Court below cannot direct the application I.A.No.225 of

2015 filed under Order XXI Rule 97 C.P.C. by respondent Nos.1 to 3/claimant petitioners to be treated as E.A. in E.P.No.1 of 2005. He also contended that in E.P. No.1 of 2005, 'J' schedule property is not the subject matter at all and since the claim-petitioners are only interested in item No.4 of 'J' schedule property, it would be incongruous to permit them to file a claim petition in E.P.No.1 of 2005.

23. Learned counsel for respondent Nos.1 to 3 firstly contended that the delay in filing the Review petition is substantial and the said delay cannot be condoned.

24. The Review petition is no doubt filed on 24-08-2018 seeking review of the order passed on 24-07-2017, but the point raised in the Review petition has substance, because even the learned counsel for respondent Nos.1 to 3 does not deny that in E.P.No.1 of 2005, 'J' schedule property is not the subject matter and as on the date of the order passed on 24-07-2017 in C.R.P.No.2508 of 2017, E.P.No.1 of 2005 had not yet been restored.

25. There is a glaring error apparent on the face of record in the order passed on 24-07-2017 in C.R.P.No.2508 of 2017 inasmuch as it directed the application I.A.No.225 of 2015 filed in the suit under Order XXI Rule 97 C.P.C. which is *per se* not maintainable in the suit, and could have only been invoked in the Execution proceedings, to be converted into E.A. in a non-existent E.P. No.1 of 2005, and also

when admittedly in E.P.No.1 of 2005, 'J' schedule property is not the subject matter in which the claim petitioners/respondent Nos.1 to 3 are interested.

26. In these circumstances, I am of the opinion that though there is some delay in seeking review of the order passed in C.R.P.No.2508 of 2017, considering the glaring error apparent on the face of record in the said order, the said delay is liable to be condoned.

27. Once glaring error apparent on the face of record is made out by the review petitioners, the order dt.24-07-2017 in C.R.P.No.2508 of 2017 is liable to be reviewed and set aside.

28. Accordingly, I.A.No.1 of 2018 in C.R.P.No.2508 of 2017 is allowed.

29. Consequently, C.R.P.No.5057 of 2018 is also allowed and the order dt.08-08-2018 in I.A.No.398 of 2017 in I.A.No.225 of 2015 in O.S.No.97 of 1983 is also set aside and I.A.No.398 of 2017 is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-06-2019

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