

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5456 of 2018

ORDER :

This Civil Revision Petition is filed by the petitioner under Section 115 of Civil Procedure Code, 1908 challenging the order dt.07.08.2018 passed in E.P.No.10 of 2018 passed in O.S.No.1375 of 2007 on the file the Additional Judge-cum-VI Senior Civil Judge, City Small Cases Court, Hyderabad.

2. The petitioner herein is the 1st defendant in the suit, which the 1st respondent had filed against him and others for recovery of possession of suit schedule property consisting of two rooms forming part of a house bearing No.1-8-531/2, situate at Chikkadpally, Hyderabad, and for rents, from the date of the suit till date of recovery of possession and costs.

3. By judgment and decree dt.29.01.2018, the suit was decreed with costs and the petitioner was directed to vacate and deliver vacant possession of the suit schedule property to the 1st respondent within three (03) months.

4. Thereafter, the petitioner filed an appeal under Section 96 of Civil Procedure Code, 1908 before the Chief Judge, City Civil Court, Hyderabad vide S.R.No.6524 of 2018 on 13.03.2018 along with an application seeking stay of the operation of the judgment and decree dt.29.01.2018 passed by the VI Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1375 of 2007 vide S.R.No.6525 of 2018. The

Chief Judge, City Civil Court, Hyderabad registered the appeal as A.S.No.71 of 2018 and issued notice to the respondents for appearance on 11.06.2018 and made over the appeal to the XXV Additional Chief Judge, City Civil Court, Hyderabad along with the stay application on 09.04.2018.

5. The matter did not see the light of the day thereafter and was not listed before the XXV Additional Chief Judge, City Civil Court, Hyderabad.

6. On 16.07.2018, the 1st respondent / Decree Holder filed E.P.No.10 of 2018 before the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad.

7. The counsel for petitioner contended that when the stay application in the first appeal was pending seeking stay of execution of decree in the Court below, the Court below ought to have taken up the stay application and considered it, but its failure to do so was taken advantage of by the 1st respondent who pressed for the E.P.No.10 of 2018 filed by him, got it ordered on 07.09.2018 and evicted petitioner, and this has caused serious prejudice to petitioner.

8. Since the counsel for 1st respondent disputed the very filing of the stay petition by the petitioner, a report was called for by this Court on 25.02.2019 from the XXV Additional Chief Judge, City Civil Court, Hyderabad as to when the stay application S.R.No.6525 of 2018 was filed in A.S.No.71 of 2018, when it was returned to the

petitioner, when the petitioner represented it and between the date of its filing on 11.03.2018, how many times it was listed till 07.07.2018.

9. A report dt.28.02.2019, has been sent to this Court by the XXV Additional Chief Judge, City Civil Court, Hyderabad stating as under :

"I submit that the counsel for defendant no.1 in O.S.No.1357 of 2007 filed appeal before the Hon'ble Chief Judge, City Civil Court, Hyderabad vide Sr.No.6524 of 2018 dated 13.03.2018 along with petition under Section 151 of CPC vide Sr.No.6525 of 2018 dated 13.03.2018, praying the Court to stay operation of judgment and decree dated 29.01.2018 passed by the VI Senior Civil Judge, City Civil Court, Hyderabad. The Hon'ble Chief Judge, City Civil Court, Hyderabad registered the said appeal as A.S.No.71/2018 with a direction to issue notice to the respondents for appearance on 11.06.2018 and made over the said appeal to this Court along with Section 151 petition on 09.04.2018.

I further submit that this Court has sent notices to the respondents through Central Nazareth Section on 10.04.2018. On verification of records it is found that the concerned has placed the petition vide Sr.No.6525 of 2018 dated 13.03.2018 before the officer on 20.11.2018, that the said petition in I.A.S.R.No.6525 of 2018 was returned on 20.11.2018 with some objections and placed before the then Presiding Officer of this Court, for giving time for resubmission of the same by complying the objections within (7) days.

I submit that the counsel for petitioner resubmitted the said petition on 22.11.2018 along with an out of order petition without complying the objection and hence, again the petition was returned on the same day by giving (7) days time for compliance and resubmission. The petitioner has resubmitted the same on 29.11.2018 by complying the objections partly along with a petition under Rule 57 of CRP, without giving notice to the caveator on record. Therefore, this Court has returned the petition on same day to resubmit the same after issuing notice to the caveator by giving (7) days time. On 30.11.2018 the petitioner has resubmitted the petition by complying the objection by giving notice to the caveator. This Court has returned the petition in I.A.S.R.No.6525/2018 by taking objection that petition under Rule

109(2) of Cr.P.C. is not filed along with the I.A.S.R. and returned the same by giving (7) days time for compliance of the same. On 05.12.2018, the counsel for petitioner resubmitted along with advancement petition with out of order petition. The advancement petition vide I.A.S.R.No.1034 of 2018 was returned on the same day along with I.A.S.R.no.6525 of 2018 by taking some objections. The counsel for the petitioner has complied the objections on the same day and resubmitted both the petitions. Thereafter the office of this Court has numbered both the petitions and the Court has ordered notices to respondents in both the petitions.

I further submit that your honour, therefore, there is no listing of the case in between 11.03.2018 to 07.07.2018.”

10. Having regard to the said report of the XXV Additional Chief Judge, City Civil Court, Hyderabad, it is clear that the stay application S.R.No.6525 of 2018, which was filed on 13.03.2018 was not listed at all. The photocopy of the stay application sent by the XXV Additional Chief Judge, City Civil Court, Hyderabad indicates that it was returned for the first time on 20.11.2018.

11. Why it was not taken up by the said Court after its making over to the said Court on 09.04.2018 till 20.11.2018, when it was returned to the counsel with some objection, is a mystery. If there was any objection it ought to have been returned to petitioner by the said Court immediately or within the short time after it is filed.

12. It is shocking that after 09.04.2018, when the appeal was made over to the XXV Additional Chief Judge, City Civil Court, Hyderabad, till 20.11.2018 nothing happened and it was kept pending without even being numbered and it was ultimately returned on 20.11.2018.

13. The application itself appears to have been numbered as I.A.No.1897 of 2018 on 06.12.2018 by which date the 1st respondent had already executed the decree on 07.09.2018 in E.P.No.10 of 2018. In my opinion, there has been some mischief in the *Nazrath* or in the Office of the said Court and the petitioner was disabled from obtaining any order staying the execution of the decree and judgment in O.S.No.1357 of 2007, by the said mischief which requires to be probed into.

14. Be that as it may, the petitioner cannot be allowed to suffer for the mistake of the Court in not numbering the stay application after 13.03.2018 till after the objections were complied on 29.11.2018.

15. In this view of the matter, in the interests of justice, the warrant of delivery of possession dt.07.09.2018 in E.P.No.10 of 2018 passed by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad is set aside, and I direct the 1st respondent to restore possession of the suit schedule property to petitioner with whatever articles which were found to be in existence therein as per the bailiff report dt.05.09.2018 of the bailiff attached the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad within one (01) week from the date of receipt of copy of this order by setting aside.

16. The XXV Additional Chief Judge, City Civil Court, Hyderabad shall thereupon take up and decide I.A.No.1897 of 2018 passed in A.S.No.71 of 2018 filed by the petitioner after hearing the 1st

respondent also within four (04) weeks and pass a reasoned order thereon.

17. The petitioner or 1st respondent shall not alienate, encumber or alter the *status quo* prevailing in the E.P. Schedule property as on date till I.A.No.1897 of 2018 in A.S.No.71 of 2018 is decided by the said Court.

18. The XXV Additional Chief Judge, City Civil Court, Hyderabad shall cause an inquiry into the cause for his office / section not putting up I.A.S.R.No.6525 of 2018 (I.A.No.1897 of 2018) from 09.04.2018 till 20.11.2018, pin responsibility on the official concerned working in his Office and initiate disciplinary action against the said official for the said conduct which facilitated the 1st respondent to execute the decree before the stay application filed on 13.02.2018 was heard.

19. Accordingly, the Civil Revision Petition is allowed as above. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01.03.2019

Note : Issue Copy by 05.03.2019.

B/o.

Ndr/*