

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.4212 of 2016 and 1128 of 2017

COMMON ORDER :

Heard both sides.

2. Since these two Revisions arise between the same parties out of the same suit, they are being disposed of by this Common order.

CRP.No.4212 of 2016 :

3. The petitioner in both these Revisions is the Judgment-Debtor in O.S.No.307 of 2009 filed by respondent for specific performance of an agreement of sale.

4. Initially, the said suit was decreed *ex parte* on 23.06.2009.

5. Thereafter, E.P.No.307 of 2010 was filed by the respondent to execute the decree by executing a registered document in favour of the respondent and also deliver possession of the plaint schedule property to the respondent by invoking Order XXI Rule 11 of Civil Procedure Code, 1908 and Order XXI Rule 32(5) of Civil Procedure Code, 1908.

6. The draft sale deed was sent for registration by the Court below on 22.04.2016, and thereafter registration took place, and the document was returned to the Court by 05.08.2016. The Court then adjourned the matter to 09.08.2016.

7. Assailing the same, the petitioner filed Civil Revision Petition No.4212 of 2016 challenging the docket order dt.05.08.2016 recording that the registered document was filed and to list the matter for hearing on 09.08.2016.

8. It is stated by the counsel for petitioner that an application to set aside the *ex parte* decree with a delay of (500) days was filed along with an application to condone the said delay; that the delay condonation petition has been rejected by the Court below; and that a Civil Revision has been filed challenging the said order with a delay, and that it is pending on the file of this Court; and therefore, the Court below could not have proceeded with the execution of the decree.

9. This contention is without any merit because there is no stay of execution of the decree in the suit O.S.No.307 of 2009 by any Court; more than ten years have elapsed by now, and the decree cannot be kept in abeyance, when there is no challenge to the decree by way of an appeal.

10. Merely because the petitioner has chosen to file an application for condonation of delay of (500) days in filing an application under Order IX Rule 13 of Civil Procedure Code, 1908, the execution of the decree cannot be stalled.

11. I, therefore, do not see any merit in Civil Revision Petition No.4212 of 2016 and is accordingly dismissed. No order as to costs.

Civil Revision Petition No.1128 of 2017

12. It appears that the respondent had filed E.A.No.734 of 2016 seeking police protection and aid to execute the warrant for delivery of possession in respect of the E.P. Schedule property.

13. By order dt.21.11.2016, the Court below granted police aid to the bailiff if there is any restraint for execution of the delivery warrant issued to the bailiff by the Court.

14. Assailing the same, the Civil Revision Petition No.1128 of 2017 is filed.

15. The counsel for petitioner contended that when there is no specific direction in the decree to deliver possession, the Court below cannot direct delivery of possession of the plaint schedule property.

16. This contention is without merit in view of Section 28(3) of the Specific Relief Act, 1963 which directs the Court which passed the decree of specific performance to also direct delivery of possession of the property on the execution of a conveyance in favour of the decree-holder in a suit for specific performance. In fact, sub-Section (4) of Section 28 prohibits the respondent from filing a fresh suit seeking delivery of possession.

17. Therefore, I also find no merit in Civil Revision Petition No. 1128 of 2017 and is accordingly dismissed. No order as to costs.

18. The interim order granted earlier on 03.03.2017 in CRP.MP.No.1485 of 2017 in CRP.No.1128 of 2017 shall stand vacated.

19. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13.02.2019

Ndr/*

