

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.5532 OF 2017

ORDER:

This revision, under Section 115 of the Civil Procedure Code, is filed by the petitioner/judgment debtor No.2 aggrieved by the order dated 01.09.2017 passed in E.A.No.5 of 2017 in E.P.No.27 of 2013 in O.S.No.15 of 2006 by the learned Principal Junior Civil Judge at Huzurabad, Karimnagar District, whereby the application filed by the revision petitioner under 47 of CPC, to declare the decree dated 10.12.2012 passed in O.S.No.15 of 2006 by the Principal Junior Civil Judge, Huzurabad, as void *ab initio* and un-executable against the revision petitioner/judgment debtor No.2, was dismissed.

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

3. Learned counsel for the revision petitioner/judgment debtor No.2 would submit that no liability has been fastened on the revision petitioner. The decree passed by the trial Court is void *ab initio* and the same is not executable and ultimately prayed to set aside the impugned order and allow the civil revision petition as prayed for.

4. On the other hand, learned counsel for the respondent/decreed holder would submit that the revision petitioner preferred appeal against the judgment and decree dated 10.12.2012 passed in O.S.No.15 of 2006 by the Principal Junior Civil Judge, Huzurabad, and the same was dismissed. Thereafter, he preferred second appeal and the same was also dismissed. Hence, the decree dated 10.12.2012 passed in O.S.No.15 of 2006 by the Principal Junior Civil Judge,

Huzurabad, has attained finality. It is also submitted that the review application filed by the revision petitioner was also dismissed. The execution Court cannot go beyond the terms of the decree. It is bound to execute the decree. Further, the subject application filed under Section 47 of CP is untenable and ultimately prayed to dismiss the civil revision petition.

5. The material placed on record shows that the judgment and decree dated 10.12.2012 passed in O.S.No.15 of 2006 by the Principal Junior Civil Judge, Huzurabad, has attained finality. The subject decree had not been satisfied by the revision petitioner/judgment debtor No.2. The execution Court cannot go beyond the validity of the decree. Before the Court below, the revision petitioner relied on a decision reported in *Jugalkishore Saraf v. M/s. Raw Cotton Company Limited*¹ wherein it was held thus:

“There could be no objection to decide questions involving investigation of complicated facts or difficult questions of law in execution proceedings, as Section 47 Civil Procedure Code authorises the Court executing the decree to decide all questions arising therein and relating to execution of the decree and Sub-Section (2) further authorises the executing Court to treat a proceeding under the Section as a suit thus obviating the necessity of filing a separate suit for the determination of the same.”

The Court below has taken into consideration the decision relied on by the revision petitioner and dismissed the impugned application. Since the decree subsists against the revision petitioner/judgment debtor No.2, the execution proceedings can go on. The Court below did not commit any illegality or perversity. There are no merits to interfere with the impugned order. The revision petition is devoid of merit and is liable to be dismissed.

¹ AIR 1955 SC 376

6. In the result, the Civil Revision Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.
There shall no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 19.11.2019
ssp

