

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1470 OF 2019

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), is filed by the revision petitioner/decreed holder aggrieved by the order, dated 14.03.2019, passed in E.A.No.1 of 2019 in E.P.No.104 of 2017 in O.S.No.358 of 2012 by the Principal Junior Civil Judge, Nizamabad, wherein the Executing Court has dismissed the subject Execution Application filed by the revision petitioner/decreed holder, under Section 151 C.P.C., seeking to grant police protection to safeguard the suit schedule property as per the judgment and decree, dated 23.07.2013, passed in O.S.No.358 of 2012 by the Principal Junior Civil Judge, Nizamabad.

2. Heard the learned counsel for revision petitioner/decreed holder and the learned counsel for respondent No.4/judgment debtor No.4 and perused the record.

3. Though there is record to show that notices were served on respondent Nos.1 to 3 and 5/judgment debtor Nos.1 to 3 and 5, there is no appearance on their behalf.

4. Learned counsel for the revision petitioner/decreed holder would submit that though there is judgment and decree, dated 23.07.2013, rendered in O.S.No.358 of 2012 by the Principal Junior Civil Judge, Nizamabad, granting perpetual injunction in favour of the revision petitioner/decreed holder restraining the respondents/

judgment debtors from interfering with the peaceful possession and enjoyment of the revision petitioner/decreed holder over the suit schedule property, the respondents/judgment debtors are continuing interference. Therefore, the revision petitioner/decreed holder has filed the subject Execution Application seeking police protection. The Executing Court, without there being any justifiable cause, erroneously dismissed the subject Execution Application and ultimately, prayed to grant the relief as sought for in the subject Execution Application.

5. On the other hand, learned counsel for respondent No.4/judgment debtor No.4 would submit that no police protection can be granted in terms of Section 151 C.P.C. The recourse available to the revision petitioner/decreed holder is to file an application, under Order XXI Rule 32 C.P.C., and in such application, the relief seeking police protection ought to have been sought by the revision petitioner/decreed holder. A separate application, seeking police protection, is not maintainable and ultimately, prayed to dismiss the Civil Revision Petition.

6. In view of the submissions made by both the parties, the point that arises for determination is as follows:

“Whether police aid, as sought in the subject Execution Application, can be granted in favour of the revision petitioner/ decreed holder?”

7. It is appropriate to refer to the decision of the Honourable Apex Court rendered in *Raja Venkateswarlu and another v. Mada Ventaka Subbaiah and another*¹, wherein it is held thus:

¹ (2017) 15 SCC 659

"But merely because an application for police protection was filed only under Section 151 CPC invoking the inherent jurisdiction, it cannot be a reason for the High Court to reject it and hold that the application should have been filed under Order XXI Rule 32 CPC. The crucial question is whether the executing court has jurisdiction. That is not disputed. The only thing is that an exact provision was not invoked. That by itself shall not be a reason for rejecting the application (See *Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal* {(1983) 2 SCC 422} and *T. Nagappa v. Y.R. Muralidhar*, {(2008) 5 SCC 633}. In case, the execution court has the jurisdiction and has otherwise followed the procedure under the Rules, the action has to be upheld. One relevant question is also whether the judgment debtor has suffered any injury or whether any prejudice has been caused to him. If the answer is in the negative, as in the instant case, the execution must proceed. The impugned judgment is hence set aside, the appeal is allowed and the order passed by the execution court is restored."

8. In the instant case, there is specific mention in the affidavit filed in support of the subject Execution Application with regard to passing of the judgment and decree, dated 23.07.2013, in favour of the revision petitioner/decreed holder, as submitted by the learned counsel for the revision petitioner/decreed holder. There is no record to show that the said decree is varied, modified or set aside, as of now. The order of granting perpetual injunction restraining the respondents/judgment debtors from interfering with the peaceful possession and enjoyment of the revision petitioner/decreed holder over the suit schedule property is still subsisting. There is an averment in the affidavit filed in support of

the subject Execution Application that in spite of the subsistence of the judgment and decree, dated 23.07.2013, there is alleged interference. The revision petitioner/decreed holder is not required to give full details of the date, time etc., of interference by the respondents/judgment debtors. Under these circumstances, the revision petitioner/decreed holder is required to be provided police protection, as prayed for in the subject Execution Application.

9. Accordingly, the Civil Revision Petition is allowed and the impugned order, dated 14.03.2019, passed in E.A.No.1 of 2019 in E.P.No.104 of 2017 in O.S.No.358 of 2012 by the Principal Junior Civil Judge, Nizamabad, is set aside and E.A.No.1 of 2019 is allowed, as prayed for. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

February 05, 2020.
MD

Dr. SHAMEEM AKTHER, J