HON'BLE SMT. JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION No.2221 of 2022

ORDER:

Both the counsel present and also counsel for respondent No.2 present.

2. This Civil Revision Petition is filed against the orders of the Trial Court in E.P.No.98 of 2020 dated 12.07.2022. E.P. is filed for realization of Rs.12,28,155/- due and payable under the decree dated 18.09.2002 in M.V.O.P.No.357 of 1998 of JDR No.2. JDR No.2 made a representation for entire amount with interest and after deducting TDS towards full satisfaction of the decree, the amount was deposited and requested to close the E.P and accordingly E.P. was closed.

3. The counsel for the respondent relied upon the citation reported in **New India Assurance Co. Ltd., Kamareddy, Nizamabad District v. Srikantha and others[1].** In which, the guidelines for deduction of the TDS amount were framed as follows:

[1] 2015 (2) ALD 337

> "As per the ratio in the decision supra while making appropriation, if part amount is appropriated towards principal amount due under the award/decree to that extent interest would cease to accrue upon that part of the principal amount and there is no reopening of the adjustment after such part payment is appropriated towards the part of the principal amount. A re-appropriation by seeking to reopen the satisfaction already rendered might result in interest being made payable even on that part of the principal amount that had already been deposited and received by the decree holder and that would be in the realm of unjust enrichment. In view of the ratio in the precedent, the amounts paid by the judgment debtor are to be appropriated firstly towards payment of interest and costs and thereafter in payment of principal as there are no directions in the award/decree regarding adjustment of payments by the judgment debtor. However, the Court of execution is obliged to take into consideration the factual aspects of the instant case and examine whether any part payment that was made or a part of any such part payment that had remained after first appropriating towards interest and costs was adjusted towards principal amount. Such examination is necessary as in such a case on that part of the adjusted principal amount interest would cease to accrue and no reopening of adjustment is permissible once a part payment is appropriated towards the part of the principal amount. In the light of the legal position enunciated in the precedent suffice if the matter on this aspect is remitted to the Tribunal to examine the issue of adjustment or appropriation of part payments having regard to the facts and legal position obtaining."

4. The Trial Court is directed to dispose of the E.P.No.98 of 2020 dated 12.07.2022 by following the above guidelines.

5. With these directions, Civil Revision Petition is allowed and remanded back.

6. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE P. SREE SUDHA

14th October, 2022.

vns/pvt

THE HONOURABLE SMT JUSTICE P.SREE SUDHA

C.R.P.No.2221 of 2022

DATE: 14.10.2022

vns/pvt