

(2001) 09 AP CK 0060

Andhra Pradesh High Court

Case No: C.R.P. No. 3970 of 2000

K. Sirajuddin Khan

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision: Sept. 19, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10, 151

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: R.V. Subba Rao, for the Appellant; Ramanna Dora, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

The revision petitioner is the defendant-judgment debtor and the C.R.P is filed against the order dated 8-9-2000 passed in IA. No. 420/2000 in I.A. No. 599/99 in OS. No. 71/2997 on the file of Senior Civil Judge, Cuddapah. The application was filed under Sections 10 and 151 C.P.C to stay the operation of the final decree in E.P. No. 172 of 199 till the disposal of I.A. No. 599 of 1999 and the said suit was filed to set aside the final decree and another application IA. No. 600 of 1999 was filed to set aside the preliminary decree. The Court below, after recording the respective contentions and after elaborately discussing, had passed the following order:

" In the result, petition is allowed on the condition of the petitioner depositing the decree debt within two weeks from the day, failing which the petition stands dismissed. In the circumstances, there is no order as to costs."

2. Aggrieved by the imposition of such condition, the revision petitioner had preferred the present revision.

3. The learned counsel, Sri. R.V. Subba representing the petitioner contended that the Court below had totally erred in imposing such onerous condition and the learned counsel for the petitioner also had brought to my notice that an interim order was granted by this Court on 28-9-2000 directing the revision petitioner to deposit Rs. 50,000/- and accordingly the deposit was made on 18-10-2000 and thus the direction made by this court was duly complied with.

4. Sri Ramanna Dora, learned counsel representing the respondent had contended that the respondent is a banking institution and the liability is not seriously disputed and since the amount involved is Rs. 3,51,653.80 ps as claimed in the suit, the Court below is justified in imposing such condition and there is no jurisdictional error. The learned counsel further contended that the application of Section 10 of C.P.C itself is not maintainable.

5. Heard both the counsel and perused the records.

6. In Gopal and Co. and Durga Prasad Soni Vs. Kure Balarajaiah Siddiramulu, it was held that conditions shall not be onerous unless there are exceptional reasons for doing so which are to be clearly stated in the order. It is pertinent to note that the applications to set aside the preliminary decree and final decree are pending, and pending disposal of those applications the present I.A., I.A. No. 420/2000 was filed to stay the operation of the final decree since the respondent had put the decree into execution. It is no doubt, that while setting aside an ex parte decree this Court had repeatedly expressed an opinion that onerous conditions should not be imposed. The present application is one filed seeking relief of stay of execution of the decree. The learned counsel for the respondent had represented that the revision petitioner had taken advantage the loan advance and he is not repaying the same and the respondent is a banking institution and the money involved is public money. It is also pertinent to note that the amount involved in the suit will come to about Rs. 4,00,000/-. By virtue of the order made by this Court, Rs. 50,000/- already had been deposited by the revision petitioner.

7. Taking all the facts and circumstances under consideration and the submission made by the respective parties, in the interest of justice there shall be a direction that the revision petitioner shall deposit Rs. 50,000/- (Rupees fifty thousand only) in addition to Rs. 50,000/- already deposited, within a period of two months from today and in default the impugned order made in I.A. No. 420 of 2000 in I.A. No. 599 of 1999 in OS. No. 71 of 1997 on the file of Senior Civil Judge, Cuddapah stands.

8. The C.R.P is allowed to the extent indicated above. No costs.