

(2012) 02 AP CK 0012

Andhra Pradesh High Court

Case No: CRP No. 516 of 2012

M. Ram Reddy

APPELLANT

Vs

L. Ramesh

RESPONDENT

Date of Decision: Feb. 10, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 29

Citation: (2013) 4 ALD 578

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: Shyam S. Agarwal, for the Appellant; Ramakanth for M.S.N. Prasad, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This civil revision petition arises out of order dated 30.1.2012 in EA No. 1 of 2012 in EPSR No. 1 of 2012 in RC No. 69 of 2006 on the file of the learned IV Additional Rent Controller, Hyderabad. The petitioner is judgment debtor in RC No. 69 of 2006. The order passed for his eviction was confirmed by all Fora including the Supreme Court before which the petitioner filed an affidavit undertaking to vacate and handover premises to the decree holders within the stipulated time. Thereafter, the petitioner filed OS No. 3205 of 2011 in the Court of V Junior Civil Judge, City Civil Court, Hyderabad, for declaration that the order dated 31.12.2009 in RC No. 69 of 2006 is unenforceable and procured by fraud. While the said suit is pending, the respondents have filed Execution Petition for eviction of the petitioner. In the said Execution Petition, the petitioner filed EA No. 1 of 2012 purportedly under Order XXI Rule 29 read with Section 159 CPC for stay of execution of the order dated 31.12.2009. The said application having been dismissed, the petitioner filed the

present civil revision petition.

2. I have heard Sri Shyam S. Agarwal, learned Counsel for the petitioner and Sri Ramakanth representing Sri M.S.N. Prosody learned Counsel for the respondents.

3. I have carefully considered the reasons given by the lower Court with which I am in full agreement on merits. But one aspect which everyone including the lower Court has ignored is the very non-maintainability of the application filed by the petitioner under Order XXI Rule 29 CPC. The said provision reads as under:

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person, against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.

4. The above reproduced provision would show that for maintaining an application, the Court before which such application is filed must be either a Court which would have passed a decree or executing the decree.

5. For application of the said provision, the following two conditions have to be satisfied, namely; (1) not only that the Court before which an application is filed is a Court which passed the decree or before which execution petition is pending; and (2) that the suit must be pending in the same Court.

6. In the instant case, even though the first condition is satisfied as it is the Rent Controller who passed the decree in favour of the landlords, the suit filed by the petitioner against the legal representatives of the landlords is not pending before the Rent Controller. The suit is pending before another Court i.e., V Junior Civil Judge, City Civil Court, Hyderabad.

7. Therefore, the Rent Controller cannot stay the execution of decree on the ground that the suit filed by the petitioner is pending before another Court.

8. In this view of the matter, the civil revision petition is dismissed. As a sequel to dismissal of the civil revision petition, CRP MP No. 710 of 2012 filed by the petitioner for interim relief is disposed of as infructuous.