
V. Basavaiah Vs Ch. Lakshmi and Another

Civil Revision Petition No. 879 of 2012

Court: Andhra Pradesh High Court

Date of Decision: Oct. 4, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 21 Rule 2, Order 9 Rule 13, 47#Limitation Act, 1963 " Section 5

Citation: (2013) 3 ALT 788

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Ramesh Babu, for the Appellant; Gade Venkateswara Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The 1st respondent filed O.S. No. 1822 of 2006 in the Court of II Additional Senior Civil Judge, Ranga Reddy

District, against the petitioner and the 2nd respondent, for recovery of certain amount, on the strength of a promissory note. An ex parte decree

was passed, on 18-11-2008. Thereafter the 1st respondent obtained a precept and filed E.P. No. 90 of 2009 in the Court of I Additional Senior

Civil Judge, Vijayawada. The petitioner states that he filed I.A. No. 88 of 2012 in the trial Court, under Order IX Rule 13 C.P.C., with a prayer

to set aside the ex parte decree and since there was delay in filing the said application, he filed I.A. No. 87 of 2012, u/s 5 of the Limitation Act.

The application is said to be pending.

2. The petitioner has also filed E.A.Sr. No. 3483 of 2012, before the Executing Court with multiple prayers, viz., to stop further proceedings in the

E.P.; to declare that the decree and the consequential proceedings that took place in the E.P. are void and non est., and to dismiss E.A. 431 of

2011. The E.A. was opposed by the 1st respondent. The Executing Court dismissed the same through order, dated 16-02-2012. Hence, this

revision.

3. Sri Ch. Ramesh Babu, learned counsel for the petitioner, submits that the view taken by the Executing Court that the application filed u/s 47 of

C.P.C. is not maintainable because the E.P. is not pending, cannot be sustained in law. He contends that, it is not necessary that the E.P. must be

pending, for an Executing Court, to appreciate the contentions, advanced by a judgment-debtor. He places reliance upon the judgment of the

Supreme Court in M.P. Shreevastava Vs. Mrs. Veena,

4. Learned counsel for the 1st respondent, on the other hand, submits that not only the property mentioned in the E.P. was attached, but also it

was brought to sale; sale certificate was issued and the possession of the property was delivered to the auction-purchaser. He contends that the

Executing Court has taken the correct view of the matter.

5. The suit filed by the 1st respondent was in the Court of II Additional Senior Civil Judge, Ranga Reddy District, and it was decreed ex parte, on

18.11.2008. The execution was initiated before a different Court, viz., the Court of I Additional Senior Civil Judge, Vijayawada, obviously by

obtaining a precept. An item of property was attached, and thereafter, it was brought to sale. The sale became final, and the 1st respondent filed

E.A. No. 431 of 2011 for withdrawal of the decretal amount. It is before the Executing Court, that the petitioner filed an application with multiple

prayers, viz., (a) to stop further proceedings in the E.P.; (b) to declare that the decree and the consequential proceedings in the E.P. as null and

void; and (c) to dismiss E.A. No. 431 of 2011. He invoked u/s 47 C.P.C. The Executing Court dismissed the application by taking the view that

the application is not maintainable. One of the reasons mentioned by it was that the E.P. is no longer pending and such an application cannot be

entertained. Extensive arguments are advanced by the learned counsel for the petitioner, vis-a-vis the said observation. Reliance is placed upon the

judgment of the Supreme Court in M.P. Shreevastava's case (supra).

6. There is some strength in the contention of the learned counsel for the petitioner. If a dispute arises as to the adjustment, discharge or satisfaction

of the decree, an application u/s 47 of C.P.C., can certainly be maintained and it is not necessary that a substantive application for execution, i.e.,

the E.P., must be pending.

7. In the case before the Supreme Court, an application under Rule 2 of Order XXI C.P.C., was filed with a prayer to record adjustment. The

executing Court did not entertain the same by observing that no E.P. was pending. It was held that there is no antithesis or overlapping between

Section 47, on the one hand, and Order XXI Rule 2 C.P.C., on the other hand. It was observed that the former is in a way substantive and the

latter is procedural, in nature. Therefore, if the judgment-debtor or decree-holder approaches an executing Court, with an application under Rule 2

of Order XXI C.P.C., it cannot be rejected on the sole ground that no formal E.P. is pending. That, however, is not the situation in the present

case. Since the purport of the application is of satisfaction of the decree, it deserves to be entertained u/s 47 C.P.C., whether or not an execution

petition was filed or pending.

8. The prayer in the application filed by the petitioner was not the one, pertaining to adjustment, or satisfaction. He wanted the executing Court to

declare the decree as well as the other proceedings in the E.P. as null and void. It is well settled principle of law that an executing Court cannot go

beyond the scope of the decree. If the decree is null and void or illegal, the judgment-debtor has to get such a declaration by filing an appeal

before an appellate Court. Even the validity of execution proceedings cannot be assailed before the Court, which executed the decree. Here again,

the remedy of appeal, or revision has to be availed.

9. One of the reliefs claimed by the petitioner was that the proceedings in the E.P. be stayed. Two hurdles came in the way of granting such a

relief. The first is that the E.P. was already closed and the question of staying the proceedings therein, did not arise. The second is that if the Court

which passed the decree and the one in which the E.P. is pending are one and the same, there may be a scope for the Court to take a

comprehensive view of the matter, be it in the context of setting aside the ex parte decree, or staying the execution proceedings. When the two

Courts are different, the power of the Executing Court is limited. Unless the Court which passed the decree does not stay the execution of the

decree, the Executing Court does not have the power to refuse to proceed further. Even that does not arise, since the E.P. was already closed.

10. The Executing Court has taken the correct view. The C.R.P. is, therefore, dismissed. There shall be no order as to costs. The miscellaneous

petition filed in this C.R.P. shall also stand disposed of.