
(2003) 05 AP CK 0002
In the Andhra Pradesh High Court
Case No : CRP No. 3879 of 2002

B. Anil Kumar and Others	Vs	APPELLANT
Sriram Chits Limited		RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

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

Citation : (2003) 6 ALD 788

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : Sai Gangadhar Chamarthi, for the Appellant; C. Nageswar Rao, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This Civil Revision Petition is directed against the order dated 2-8-2002 passed in IA No. 935 of 2002 in IA No. 870 of 2002 in OS No. 12 of 2002 on the file of the Principal Senior Civil Judge, Eluru, whereby the learned Principal Senior Civil Judge dismissed the application of the petitioners filed under Order 21 Rule 29 CPC seeking stay of the execution of decree passed in OS No. 12 of 2002.

2. The petitioners herein are the defendants in OS No. 12 of 2002. The respondent herein is the plaintiff in the said suit. The plaintiff filed the suit for recovery of Rs. 5,01,243/- and the said suit came to be decreed on 14-6-2002 by the Principal Senior Civil Judge, Eluru. Subsequently, the plaintiff got the decree transferred to the file of the Additional Senior Civil Judge, Vijayawada, for execution on transfer of the decree, the plaintiff-decree holder filed E.P. No. 123 of 2002 in the Court of Additional Senior Civil Judge, Vijayawada, seeking attachment and sale of the properties detailed in the schedule for realization of the decretal amount. Whereas the petitioners-defendants filed IA No. 870 of 2002 under Order 9 Rule 13 CPC, to set aside the ex parte decree dated 14-6-2002 before the learned Principal Senior Civil Judge, Eluru. They also filed

IA No. 935 of 2002 under Order 21 Rule 29 seeking stay of the execution of the decree pending their application to set aside the ex parte decree. The learned Senior Civil Judge dismissed the application on the ground that the Court which passed the decree is not empowered to grant stay of the execution of the decree under Order 21 Rule 29 CPC. Feeling aggrieved by the said order, the petitioners-defendants have filed the present Civil Revision Petition.

3. The learned Counsel for the petitioners contends that it is the Court which passed the decree has the power to entertain the application under Order 21 Rule 29 CPC to grant stay of the execution of the decree and not the Court to which the decree has been transferred for execution. He placed reliance on the decision of the Supreme Court in Sri Krishna Singh Vs. Mathura Ahir and Others, . It has been held in the said decision that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decree holder whose decree had been passed by that Court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution under Rule 29 and Order XXI of CPC.

4. In view of the preposition of law laid down by the Supreme Court, it is the only Court, which passed the decree has the power to entertain the application under Order 21 Rule 29 CPC. The lower Court has misread the provisions of Order 21 Rule 29 and erred in finding that it is the executing Court which has to entertain the application seeking stay of the execution of the decree under Order 21 Rule 29.

5. Considering the facts and circumstances of the case, the execution of the decree granted in OS No. 12 of 2002 is stayed pending disposal of the application filed by the petitioner under Order 9 Rule 13 CPC. subject to the petitioners depositing 1/4th of the suit amount and suit costs to the credit of O.S No. 12 of 2002 on the file of the Principal Senior Civil Judge, Eluru within a period of six weeks from the date of receipt of a copy of this order. As and when the petitioners deposits the amount, the respondent-plaintiff is entitled to withdraw the suit costs without furnishing any security. The lower Court is directed to dispose of the application filed by the petitioners under Order 9 Rule 13 as expeditiously as possible.

6. Accordingly, the Civil Revision Petition is allowed.