
(2006) 11 AP CK 0052
In the Andhra Pradesh High Court
Case No : CRP No. 5383 of 2006

Radha Krishna Iron Stores and Krishna and Others	APPELLANT
Vs	
Srikakolapu Pullama	RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22

Citation : (2007) 3 ALD 157

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Sudhakar Reddy and Neeraja Reddy, for the Appellant; P.R. Prasad, for the Respondent

Judgement

L. Narasimha Reddy, J.—This revision is one among about a dozen of proceedings, that ensued between the parties, in the matter of eviction from certain premises. Petitioners are the tenants, and the respondent is the landlady. The respondent filed O.S. No. 61 of 1994 in the Court of II Additional Junior Civil Judge, Vijayawada, for eviction, and for damages. The suit was decreed as prayed for. Aggrieved thereby, the petitioners filed A.S. No. 44 of 1996 in the Court of Principal Senior Civil Judge, Vijayawada. The decree for eviction was set aside, and the one, for damages, was upheld with certain modifications.

2. In the matter of enforcing the modified decree, several proceedings, be it, in the form of seeking clarification or executing the decree, at various stages, ensued. Ultimately, it emerged that the decree passed by the lower appellate Court was clarified through order dated 3-10-2005 in I.A. No. 989 of 2005. Based on the same, the respondent filed E.P. No. 205 of 2006, for recovery of a sum of Rs. 4,01,771/-. She sought for attachment of the movables, in the form of stock in trade of the petitioners. The Executing Court directed attachment, as a result of which, the petitioners were compelled to deposit the amount of Rs. 4,01,771/-. The grievance of the petitioners is that though the E.P. was filed beyond two years from the date of the decree, passed by the lower appellate

Court, the Executing Court did not issue notice to them, as contemplated under Rule 22 of Order 21 C.P.C.

3. Learned Counsel for the petitioners submits that the trial Court has taken an incorrect view of the matter, by treating the date of clarification as the date of decree, and dispensing with the notice, provided for under the relevant provisions.

4. Learned Counsel for the respondent, on the other hand, submits that at an earlier point of time, his client filed E.P. No. 173 of 2002, and the same was rejected, on the ground that the decree was not clear, and after undertaking the required exercise, the clarification was obtained and the E.P. was filed within two years from the date of the modified decree. He contends that whatever may have been the circumstances, under which the attachment came to be ordered, the petitioners cannot have any grievance, since they have entered appearance, and it shall be open to them, to put forward all their contentions.

5. Rule 22 of Order 21 C.P.C. maintains a distinction in the matter of issuance of notice, before resorting to any steps in the execution of a decree. In case, the E.P. is filed within two years from the date of the decree, the Executing Court would not be under obligation to issue notice to the judgment-debtors. On the other hand, if the E.P. is filed beyond that period, the judgment-debtors are to be issued notice. In the present case, uncertainty prevailed, as to the purport of the decree, dated 14-8-2001, passed by the lower appellate Court. It was on account of this, that E.P. No. 173 of 2002, filed by the respondent, was dismissed. As late as on 3-10-2005, the lower appellate Court clarified its decree. Thereupon, the present E.P. is filed.

6. If the time is calculated from the date of the clarification, the E.P. can be said to have been filed within two years from the relevant date. On the other hand, if the time is calculated from the date of the decree, initially passed by the lower appellate Court, it is beyond two years. However, the distinction maintained by Rule 22, in the matter of issuance of notice, has virtually paled into insignificance, in the present case, with the appearance, entered by the petitioners.

7. It may be true, that the petitioners were required to shell-down substantial amount, before they were given an opportunity to contest the matter. However, their interest can be protected by directing that the deposited amount shall not be permitted to be withdrawn by the respondent, till the Executing Court passes an order in that connection, after hearing both the parties. The apprehension of the petitioners can also be allayed by directing that, no further attachment shall be resorted to, having regard to the deposit, already made by them.

8. For the foregoing reasons, the C.R.P. is disposed of, directing that,

(a) the amount of Rs. 4,01,771/- shall remain in deposit with the Executing Court, till it passes further orders.

(b) the Executing Court shall give opportunity to both the parties, and in particular, to the petitioners herein, to put forward their contentions, and thereafter, pass orders, in relation to the manner in which the deposited amount shall be dealt with, and dispose of the same within two months from the date of receipt of a copy of this order.

(c) till the said exercise is undertaken, the Executing Court shall not order attachment of any movable or immovable properties, belonging to the petitioners.

There shall be no order as to costs.