



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 5087 OF 2015

Between:

1. SHAIK MASTAN VALI & ANOTHER S/o. Shaik Mahaboob
Occ:Business
R/o. D.No. 7-12-28, Mahantjhipuram, Vijayawada,
Krishna District.
2. Shakeela Begum, W/o. Shaik Khasim Peera
Occ: Housewife and Properties
R/o. D.No. 8-5-9, Tatra Swamy Pillai Street, Mahantipuram, Vijayawada,
Krishna District.

...PETITIONER(S)

AND:

1. K. J. N. PRASAD S/o. Venkata Subbaiah Chowdary
Proprietor, Hotel Chaya, Prakasam Road, Governorpet,
Vijayawada, Krishna District.

...RESPONDENTS

Counsel for the Petitioner(s): RAVITEJA PADIRI

Counsel for the Respondents: J CH Y NARASIMHAM

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.5087 of 2015

Between:

Shaik Mastan Vali and another
... Petitioners/Respondents/Judgment-debtors

Versus

K.J.N.Prasad
...Respondent/Petitioner/Decree-holder

* * * * *

DATE OF ORDER PRONOUNCED : 20.06.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Order? Yes/No

JUSTICE B.V.L.N.CHAKRAVARTHI



*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.5087 of 2015

% 20.06.2023

Between:

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...Respondent/Petitioner/Decree-holder

**! Counsel for the Revision
petitioners**

: Sri Raviteja Padiri

^ Counsel for the Respondent

: Sri J.Ch.Y.Narasimham

< Gist:

> Head Note:

? Cases referred:

This Court made the following:



THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI

CIVIL REVISION PETITION NO.5087 of 2015

ORDER:

Heard Sri Raviteja Padiri, learned counsel representing for revision-petitioners/judgment-debtors & Sri J.Ch.Y.Narasimham, learned counsel representing for respondent/decree-holder.

2. This revision-petition is directed against the Order, dated 21.09.2015 in E.P.No.51 of 2015 in O.S.No.93 of 2005 on the file of Principal Junior Civil Judge's Court, Vijayawada. The revision-petitioners filed E.P.No.51 of 2015 in O.S.No.93 of 2005 under Order XXI Rule 32 (1) of the Code of Civil Procedure, 1908 (for brevity 'CPC').

3. Learned counsel for the revision-petitioners/judgment-debtors would submit that no evidence was placed before the Trial Court to establish that the revision-petitioners had violated the decree of Permanent Injunction and hence, the Order of the learned Execution Court is illegal.

4. Learned counsel for the respondent/decree-holder would submit that both sides adduced evidence in the execution petition and the Execution Court after appreciating the evidence



available on record, held that the revision-petitioners/judgment-debtors have violated the decree of Permanent Injunction and ordered their detention in civil prison as per Order XXI Rule 32 (2) of CPC and there are no grounds to interfere with the Order of the Execution Court.

5. In the light of above rival contentions, the point that would arise in the revision-petition is as under: -

“Whether the Execution Court committed any material irregularity in the Order, dated 21.09.2015 passed in E.P.No.51 of 2015 in O.S.No.93 of 2005 on the file of Principal Junior Civil Judge’s Court, Vijayawada ?”

6. **P O I N T**: -

The Order of the learned Execution Court would show that the respondent/decree-holder was examined as P.W.1 and the 1st revision-petitioner was examined as R.W.1 before the Trial Court in support of their respective contentions.

7. It is an admitted fact that the suit in O.S.No.93 of 2005 filed by the respondent/decree-holder for Permanent Injunction was decreed and became final. The decree of Permanent Injunction speaks that the revision-petitioners/judgment-debtors



were restrained by way of Permanent Injunction from making constructions in deviation of the approved plan or without obtaining plan from the concerned authorities.

8. Order XXI Rule 32 (1) of CPC applies to cases where a party is directed to do an act, as well as where judgment debtor is restrained from doing any act. If the judgment debtor willfully failed to obey the decree, it can be enforced by judgment debtor detention in the civil prison till the decree is obeyed or by attachment of judgment debtor property or by both. The onus is on the decree holder to prove that judgment debtor willfully disobeyed the decree.

9. The contention of the respondents/decreed-holder is that after the said decree, the revision-petitioners/judgment debtors willfully made the disputed constructions without any plan approved by the concerned authorities and thereby, disobeyed the decree.

10. The Order of the Trial Court would show that decree-holder to discharge the onus, examined himself as P.W.1 and also filed photographs and commissioner report. The 1st revision-petitioner examined himself as R.W.1. Considering the said evidence trial



Court held that it is proved that by the time of filing the suit, the ground-floor was unfinished, and an Advocate-Commissioner visited and noted the physical features of the constructions and they establish that they were subsequent to 2009. It was also held that evidence of R.W.1 would itself establish that the construction found in Ex.P.2 photograph pertains to his building, and that they were constructed after 2009; No evidence was placed to prove that it has approval of the Municipal Corporation.

11. Therefore, when the evidence placed by decree holder and judgment-debtors, before the Trial Court establish that alleged constructions were made after the decree, it is for the judgment debtor to prove that they were constructed after the plan was approved by the concerned authorities. But no evidence was adduced by the judgment debtor to prove the same. On the other hand, they taken a plea that plan was approved in the year 2002 which is false. Hence, it would establish that they willfully violated the decree.

12. In the above circumstances, the Execution Court came to an opinion that the revision-petitioners/judgment-debtors made construction without a plan approved by the Municipal Corporation and there by willfully violated the decree of



Permanent Injunction, and hence, passed orders for detention in civil prison under Order XXI Rule 32 (1) of CPC.

13. In the light of above findings made by the learned Execution Court, based on evidence available before it, this Court is of the considered opinion that there are no grounds to interfere with the Order of the Trial Court as there is no illegality committed by the Execution Court while passing the impugned Order. Therefore, the revision-petition is liable to be dismissed.

14. Accordingly, the Civil Revision Petition is 'Dismissed'. There shall be no order as to costs.

15. As a sequel, miscellaneous applications pending, if any, shall stand closed.

B.V.L.N.CHAKRAVARTHI, J

20th June, 2023.

Note:

LR Copy to be marked.

B/o.
DNB