

Vasant Rao Vs. E. Raj Reddy

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Court : Andhra Pradesh

Decided On : Dec-02-2002

Reported in : 2003(1)ALD726; 2003(2)ALT13

Judge : G. Rohini, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 22

Appeal No. : CRP No. 5502 of 2002

Appellant : Vasant Rao

Respondent : E. Raj Reddy

Advocate for Pet/Ap. : V. Ravi Kiran Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G. Rohini, J.

1. This Civil Revision Petition is directed against the order dated 31.10.2002 in E.P.No. 44/2002 in O.S.No. 25/2000 on the file of the Court of the Senior Civil Judge, Adilabad.

2. The revision petitioner is the decree holder who obtained a decree dated 1.7.2002 in O.S.No. 25/2000 declaring that he is the owner of eastern part of the building bearing No. 1/2/13-5 situated at Bokkalaguda, Shantinagar, Adilabad and for delivery of vacant possession of the same by evicting the defendant and also for recovery of mesne profits at the rate of Rs. 1,000/- per month from the date of suit.

3. He filed E.P.No.44/2002 on 22.10.2002 under Order 21 Rules 11 and 15 of Civil Procedure Code for eviction of the Judgment-debtor from the suit schedule premises and for delivery of vacant possession. In the said execution petition the Court below directed notice to the Judgment debtor and posted the matter to 5.12.2002. The said order of the learned Judge dated 31.10.2002 which is assailed in this Revision Petition by the Decree-Holder runs as follows:

'Since as per the Office submission appeal is filed along with delay condone petition and stay petitions, therefore, issue notice to Judgment-debtor. Call on 5.12.2002'

4. Sri V. Ravikiran Rao, the learned Counsel for the Revision Petitioner submitted that since the execution petition is filed within two years from the date of the decree there is no need to issue any notice to the Judgment-debtor. According to the learned Counsel the order under revision directing notice to the Judgment-debtor is contrary to the true intent of Order 21, Rule 22 of Civil Procedure Code. The learned Counsel vehemently contended that the order under revision is ex facie illegal and cannot be allowed to continue.

5. Order 21, Rule 22 of Civil Procedure Code runs as follows:

22. Notice to show cause against execution in certain cases

(1) Where an application for execution is made-

(a) more than [two years] after the date of the decree, or

(b) against the legal representative of a party to the decree, [or where an application is made for execution of a decree filed under the provisions of Section

44-A] [or],

[(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than [two years] having elapsed between the date of the decree and the application for execution if the application is made within [two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the applications being made against the legal representative of the Judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against them.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

6. Under Rule 22 notice is mandatory when an application for execution has been made more than two years after the date of decree and in the other circumstances as stated under Clauses (b) and (c) of Sub-rule (1) of Rule 22. However, it is pertinent to note that even such a notice can be dispensed with, in cases where the proviso to Sub-rule (1) is attracted. It is also pertinent to note that under Sub-rule (2) discretion is conferred on the Court to issue process in execution of a decree without issuing prescribed notice for the reasons to be recorded if it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

7. On a plain reading of Rule 22, it is clear that nothing has been provided, either expressly or by necessary implication, that notice shall not be issued where an execution petition is filed within 2 years from the date of the decree. Rule 22 exclusively deals with cases where notice is mandatory. In the absence of any

express provision with regard to execution petitions filed within two years, it is true that it is open for the Court to execute the decree without issuing notice. But that does not mean that notice to the respondent is totally prohibited in all cases where the execution petition is filed within two years. I am of the view that even in such cases it is always open for the Executing Court, in exercise of its discretion to issue notice to meet the ends of justice. Where such discretion is judiciously exercised and particularly where reasons are recorded it cannot be said that there is any error in the exercise of jurisdiction vested under law.

8. The learned Counsel for the petitioner placed reliance on the order of a learned Single Judge of this Court in Ramesh Kumar Jhun Jhunwala v. P. Dattatri (CRP No. 2304 of 1995 dated 21.7.1995) and contended that a notice can be issued in execution petition only where the contingencies covered by Sub-clauses (a) to (c) of Order 21, Rule 22(1) of Civil Procedure Code are to be invoked.

9. In the said case the learned Judge was dealing with an order passed in an application for execution of money decreewhereunder the Executing Court failed to assign any reasons. The case on hand is clearly distinguishable. The view expressed by the learned Judge in C.R.P.No. 2304 of 1995 in the facts and circumstances of the said case cannot be taken as laying down law.

10. As expressed above, in my considered opinion Rule 22 of Order 21 of Civil Procedure Code does not preclude the Court to direct notice to the judgment debtor in exercise of its discretion on the basis of the facts and circumstances of the particular case even if the execution petition is filed within two years from the date of the decree.

11. In the instant case the decree is for eviction of the Judgment-debtor from the suit schedule property. A perusal of the order under Revision shows that on the basis of the Office note that an appeal is filed along with a petition to condone delay and stay petition, the Court below thought it fit to issue notice to the Judgment-debtor. In the facts and circumstances of the case the discretion exercised by the learned Judge in directing notice to afford an opportunity to the Judgment-debtor cannot be termed as perverse or for any extraneous considerations.

12. For the aforesaid reasons, I do not find any merit in the contentions raised by the petitioner. There is absolutely no reason to interfere with the impugned order. Accordingly the Civil Revision Petition is dismissed at the stage of admission. No costs.

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