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Court : Rajasthan

Decided On : Sep-15-2005

Reported in : AIR2006Raj239

Judge : Gopal Krishan Vyas, J.

Acts : Code of Civil Procedure (CPC) - Order 41, Rule 5

Appeal No. : Civil Revn. Petn. No. 143 of 2000

Appellant : Chaina Ram

Respondent : Jai Roop

Advocate for Def. : V.N. Kalla, Adv.

Advocate for Pet/Ap. : R.K. Singhal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Gopal Krishan Vyas, J.

1. By the present revision petition, the petitioner has challenged the order passed by the learned District Judge, Pali and Civil Miscellaneous Case No. 14/ 91, dated 3-8 1991 whereby he has rejected the verification of security bond submitted by

the petitioner.

2. It is submitted by the learned Counsel for the petitioner that there was an ex parte money-decree against the petitioner and in favour of the respondent and for setting aside the trial Court order passed on 19-10-1993 that the decree be set aside on the condition that the petitioner shall deposit Rs. 500/- as cost and also submit solvent security for the decretal amount. The security bond submitted by the petitioner was rejected by the trial Court. However, in the meantime, the petitioner had preferred revision petition being S. B. Civil Revision Petition No. 128/94 before this Court. The petitioner has submitted that before orders could be passed in the said revision petition on the stay application, in the meanwhile, the trial Court passed order dated 9-2-1994 whereby the order dated 19-10-1993 stood automatically vacated. The petitioner thereupon challenged the said order dated 9-2-1994 before this Court in S. B. Civil Revision Petition No. 424/94 which was allowed by this Court on 21-11-1995 and the petitioner was directed to furnish solvent security with cost of Rs. 500/- within one month from the date of order.

3. It is contended by learned Counsel for the petitioner that the solvent security was filed before the trial Court on 20-12-1995 in compliance of the order passed by this Court on 21-11-95 along with certificate of status of the security issued by the Tehsildar, Pali. Objections were filed against acceptance of the security offered by the petitioner which were decided by the trial Court vide order dated 29-5-1999 directing the petitioner to furnish fresh security bond in accordance with law. The petitioner submitted fresh security bond vide application dated 3-8-1999 but the same was also opposed by the respondents on which the trial Court passed impugned order dated 18-11-1999 by which security submitted by the petitioner along with verification was rejected. It is argued that the reasons mentioned in the order dated 18-11 99 are contrary to law and not tenable. The learned Counsel submits that the trial Court has fallen into error while holding that verification is not given in Form No. 2 of Appendix-G to the Code of Civil Procedure. The Counsel for the petitioner has, therefore, contended that the trial Court has committed grave jurisdictional error in holding this view.

4. Counsel for the petitioner has invited attention of the Court to the judgment of the Division Bench of Andhra Pradesh High Court in *Royal Printing Works v. Oriental Bank of Commerce* : AIR 1990 AP120 , in which the Court held that where security is given by creating equitable mortgage i.e.; by deposit of title-deeds, there is no necessity for registration. Learned Counsel for the petitioner then adverted to the judgment of this Court in *Modi Ram v. Smt. Sukan Bai* , wherein while allowing the revision petition this Court directed the trial Court to accept security without stamp duty.

5. On the other hand, learned Counsel for the respondent urged that in pursuance of the order of this Court the solvent security was to be accepted as per the satisfaction of the trial Court and the trial Court was not satisfied, therefore, the impugned order was passed in accordance with law warranting no interference.

6. The pro forma of Form No. 2 of Appendix-G to the Code of Civil Procedure is used only when security bond is required to be furnished under the provisions of Order 41, Rule 5, C.P.C. The Court below has also erred in rejecting the solvent security on the ground that there is no registration. It may further be noted that the judgment followed by the trial Court in AIR 1980 AP 290 does not lay down as principle of law that in every case security bond must be registered.

7. The principle of registration of security is applied when third party immovable property security is given but when equitable mortgage is sought to be created by way of pleading security through title-deeds etc. there is no necessity for registration. Unless the Court otherwise directs, the party is free to submit security in the usual manner and what is left to the discretion of the Court is its satisfaction. Therefore, registration would be necessary when immovable property is pledged security but when solvent security by creating equitable mortgage upon title-deeds etc. is furnished the registration is not required. Holding this view, I am of the opinion that the trial Court was not right in rejecting the security furnished by the petitioner.

8. Accordingly, the revision petition is allowed. The impugned order dated 18-11-99 is set aside and the trial Court is directed to accept the security filed by the petitioner and proceed further in accordance with law. No order as to costs.

