

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD**
* * * *

C.R.P.No.107 of 2022

Between:

State Bank of India

Petitioner

VERSUS

G.P. Veerabhadram (died) *per* L.Rs
Smt. Bhavani Annapurna & 3 Others.

Respondents

JUDGMENT PRONOUNCED ON: 21.01.2022

HON'BLE SRI JUSTICE UJJAL BHUYAN

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

UJJAL BHUYAN, J

* **HON'BLE SRI JUSTICE UJJAL BHUYAN**

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! Counsel for Petitioner : Sri Mr.M.Narender Reddy

^ Counsel for the respondents : Sri A. Ravi Babu

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> HEAD NOTE:

? Cases referred

¹ **AIR 1965 AP 215**

THE HON'BLE SRI JUSTICE UJJAL BHUYAN**C.R.P.No.107 OF 2022****ORDER:**

Heard Mr.M.Narender Reddy, learned counsel for the revision petitioner.

2 This revision petition has been filed under Article 227 of the Constitution of India, challenging the legality and validity of the order dated 26.11.2021 passed by the learned II Additional Chief Judge, City Civil Court, Hyderabad in E.P.No.17of 2012 in Arbitration Claim No.4 of 1993.

3 Relevant facts may be briefly stated.

4 G.P.Veerabhadram was a member of State Bank of India Supervising Staff Co-operative House Building Society Limited, Hyderabad since the year 1987. He had applied for allotment of a plot of land in his favour. But State Bank of India Supervising Staff Co-operative House Building Society Limited (briefly referred to as 'the Society' hereinafter) declined to allot such a plot. As a result, G.P.Veerabhadram filed a dispute before the Deputy Registrar of Cooperative Societies (Housing), Hyderabad under Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964, which was registered as ARC No.4 of 1993. It was contested by the Society whereafter, the Deputy Registrar passed the award dated 28.02.1994 holding that G.P.Veerabhadram was a member of the Society and therefore he was entitled to a plot

of land from amongst the available plots of land. Consequently, the Society was directed to allot a plot of land to G.P.Veerabhadram at the same rate at which plots of land were allotted to other members of the Society.

5 Aggrieved by the aforesaid award dated 28.02.1994, the Society preferred an appeal before the Cooperative Tribunal at Hyderabad, which was registered as CTA No.2 of 1994. By the judgment and order dated 28.11.1995, the Cooperative Tribunal dismissed the appeal. It was specifically held by the Cooperative Tribunal that G.P.Veerabhadram was a member of the Society since 05.01.1981. It was further held that he was entitled to a plot of land at the market rate that was prevailing in that locality as on 05.01.1981.

6 The Society thereafter filed a writ petition before this Court assailing the order of the Cooperative Tribunal affirming the award. The writ petition was registered as W.P.No.9652 of 1996. By the judgment and order dated 27.11.1996, this Court did not find any ground to interfere and accordingly dismissed the writ petition at the admission stage itself.

7 In the meanwhile, the decree holder - G.P.Veerabhadram expired. Thereafter, his legal heirs i.e. wife, two sons and daughter filed Execution Petition No.1 of 2008 before the II Additional Chief Judge, City Civil Court,

Hyderabad for execution of the award dated 28.02.1994. By the order dated 11.02.2011, Execution Petition No.1 of 2008 was dismissed on the ground that no certificate issued by the Registrar of Cooperative Societies under Section 70A of the A.P. Cooperative Societies Act, 1964 was filed along with the execution petition. It was held that mere filing copy of the award was not sufficient; the related certificate was required to be filed.

8 Aggrieved by the above order dated 11.02.2011, the decree holders (legal heirs of late G.P.Veerabhadram) filed Civil Revision Petition before this Court, which was registered as CRP No.3663 of 2011. By the order dated 19.01.2012, this Court held that filing of certificate along with the execution petition was a necessary requirement under Section 70A of the A.P. Cooperative Societies Act, 1964. Execution petitioners had failed to file such a certificate. Therefore, learned Court below had rightly dismissed the execution petition. As such, this Court declined to interfere with the order dated 11.02.2011. However, liberty was granted to the execution petitioners to file a fresh execution petition by enclosing such a certificate. It was clarified that if such an execution petition was filed, Court below should entertain and dispose of the same on merit after allowing the respondent to contest the execution petition on all legally permissible grounds.

9 Thereafter, decree holders filed the related execution petition before the learned Court below, which was registered as E.P.No.17 of 2012 by enclosing therewith the required certificate. The same was contested by the revision petitioner. However, learned Court below, by the order dated 26.11.2021, allowed the execution petition and directed the judgment debtor to allot one plot of land to the decree holders being the legal heirs of the deceased decree holder G.P.Veerabhadram at the market rate that was prevailing in that locality as on 05.01.1981 within 30 days.

10 Revision petitioners in their counter affidavit to the execution petition filed by the decree holders had raised two objections; firstly, the execution petition was barred by limitation; and secondly, the certificate issued by the Registrar (Housing) under Section 70A of the A.P. Cooperative Societies Act, 1964, which was annexed to the execution petition was a fabricated one.

11 Insofar the first objection is concerned, it is the contention of learned counsel for the petitioner that the related execution petition for execution of the award dated 28.02.1994 was filed after a lapse of 12 years. Therefore, the execution petition was barred by limitation.

12 Learned Court below took the view that the date of the award is 28.02.1994. On being appealed against by the

Society, the above award was affirmed by the appellate order dated 28.11.1995, whereby the appeal filed by the Society was dismissed. When this was challenged by the Society before this Court in Writ Petition No.9652 of 1996, the same was also dismissed, vide order dated 27.11.1996. Therefore, learned Court below held that by application of the doctrine of merger, the original award stood merged with order of this Court dated 27.11.1996. As a result, the limitation of 12 years would commence from 28.11.1996 which would mean that the execution petition would have to be filed on or before 27.11.2008. E.P.No.1 of 2008 was filed on 07.11.2007 i.e., within 12 years from the order of this Court dated 27.11.1996. E.P.No.1 of 2008 was dismissed on 11.02.2011 on the ground that the related certificate under Section 70A of the A.P. Cooperative Societies Act, 1964 was not annexed to the execution petition. Aggrieved by this, the decree holders filed CRP No.3663 of 2011 before this Court. Though this Court declined to interfere in the matter, nonetheless, liberty was granted to the decree holders to file a fresh execution petition by enclosing the relevant certificate. It was thereafter that Execution Petition No.17 of 2012 was filed on 03.12.2012 enclosing therewith the certificate under Section 70A of the A.P. Cooperative Societies Act, 1964. Learned Court below took the view that the related execution petition was a continuation of the earlier execution petition and therefore it was held that the execution petition was filed

within the period of limitation. Finding of the learned Court below on this issue is as under:

13. In view of the above referred two decisions submitted by the learned counsel for the Decree Holders, the execution date starts from 28.11.1996 i.e. after dismissal of W.P.No.9652 of 1996.

14. The Decree Holders filed EP No.1 of 2008 on 7.11.2007 i.e. within 12 years from the dismissal of W.P.No.9652 of 1996.

15. The EP No.1 of 2008 was dismissed by this Court on 11.2.2011, aggrieved by the same, the Decree Holders preferred CRP No.3663 of 2011 before the Hon'ble High Court of A.P., the same was allowed on 19.1.2012 by giving liberty to the Decree Holders to file fresh EP by enclosing the certificate under Section 70-A of APCS Act, 1964.

16. The present Execution Petition is filed on 3.2.2012 along with the certificate under Section 70-A of APCS Act.

17. As such, the present Execution Petition is continuation to the earlier Execution Petition No.1 of 2008 by virtue of orders dated 19.1.2012 in CRP No.3663 of 2011 on the file of Hon'ble High Court of A.P.

18. In view of the above said discussions, this Court is of the opinion that the present Execution Petition is filed by the Decree Holders within the period of limitation as continuation to the Execution Petition No.1 of 2008. Accordingly, the point No.1i is answered against the Judgment Debtor and in favour of the Decree Holders.

13 At this stage, we may refer to the order of this Court dated 19.01.2012 in CRP No.3663 of 2011. Relevant portion of the said order reads as under:

6. Accordingly, while declining to interfere with the said order, liberty is however given to the petitioners to file a fresh execution petition by enclosing a certificate. If such an execution petition is filed, the Court below shall entertain and dispose of the same on merits after allowing the respondent to contest the execution petition on all legally permissible grounds."

14 From a reading of the order of this Court as extracted above, it is evident that this Court had granted liberty to the decree holders to file a fresh execution petition by enclosing the certificate under Section 70-A of the A.P. Cooperative Societies Act, 1964. It was directed that if such an execution

petition was filed, the executing Court would entertain and dispose of such execution petition on merit after allowing the respondent (J.Dr) to contest the execution petition on all legally permissible grounds.

15 Viewed in the above context, this Court finds no error or infirmity in the view taken by the learned Court below. Learned senior counsel for the revision petitioner has referred to a decision of this Court in the case of **KUMMATHI NARAYANAPPA Vs. TALARI AKKUKAPPA**¹ to contend that E.P.No.17 of 2012 was a fresh execution petition and could not have been construed to be a continuation of the earlier execution petition being E.P.No.1 of 2008 which suffered from material irregularity. I am afraid, acceding to such a contention raised would result in distortion of applicable legal provisions and would cause grave injustice to the decree holders. In the facts and circumstances of the case, learned Court below had rightly held the fresh execution petition as a continuation of the earlier one inasmuch as the earlier one was not adjudicated on merit. Interference was declined in view of failure of the decree holders to place on record the relevant certificate. As a matter of fact, the executing Court could have either returned the execution petition for filing afresh in accordance with Section 70A of the A.P. Cooperative Societies Act, 1964 or given an opportunity to the decree

¹ **AIR 1965 AP 215**

holders to bring such certificate on record. However, in revision this Court granted liberty to the decree holders to file a fresh execution petition by enclosing such a certificate and in the event such an execution petition was filed, the executing Court was directed to entertain and dispose of the same on merit. In the light of such a direction of this Court, learned Court below adopted the correct approach and no fault can be found with such an approach. The approach of the learned Court below is certainly a justice oriented approach. The decree holders are yet to enjoy the fruits of the litigation initiated by their father/husband though they had succeeded at each and every stage of the litigation, the date of the award being 28.02.1994. We are now in 2022. Almost 28 years have gone by without the decree being executed.

16 It must always be remembered that rules and procedures are the handmaid of justice. Insistence on rules and procedure cannot be at the cost of justice. Supreme Court has held time and again that procedure is meant to further the ends of justice and is not a thing designed to trip people up. Courts must always adopt that interpretation of the rules and procedure which advances the cause of justice and not which acts as an obstruction to justice.

17 Insofar the second objection raised by the petitioner i.e. the genuineness of the certificate is concerned, the same has been gone into by the learned Court below and rejected such

objection on the ground that the judgment debtor did not place any material before the Court to discredit the genuineness of the certificate.

18 Thus, upon thorough consideration of the matter, Court is not inclined to entertain the present revision petition, which is accordingly dismissed. No order as to costs.

20 Miscellaneous petitions, if any, pending in this revision petition shall also stand dismissed.

UJJAL BHUYAN, J

Date: 21.01.2022

L.R. copy be marked.

B/o Kvsn