

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CIVIL REVISION PETITION Nos.262 and 264 of 2022

CRP No.262 of 2022

Between:

K.Rajgopal Rao

...Petitioner

AND

1. M/s. Otira Pharmaceuticals Pvt. Ltd and another

...Respondents

CRP No.264 of 2022

Between:

K.Rajgopal Rao

...Petitioner

AND

1. M/s.Chemsol Labs Pvt. Ltd., and another

...Respondents

COMMON ORDER PRONOUNCED ON: 03.10.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see
the Judgment ?
2. Whether the copies of judgment may be : Yes/No
marked to Law Reports/Journals
3. Whether Their Lordship/Ladyship wish to : Yes/No
see the fair copy of judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

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...Respondents

! Counsel for Petitioners
In both the CRPs

: Sri Vedula Srinivas,
Learned Senior Counsel
appearing for
Smt.Vedula Chiralekha

^ Counsel for Respondent No.1 :
In both the CRPs

Sri P.Krishna Arjun

< GIST :

> HEAD NOTE :

? Cases referred :

1. AIR 1987 ORISSA 79
2. 2015 (6) ALD 739 (DB)
3. (2001) 10 SCC 703

THE HON'BLE SRI JUSTICE K.SARATH**CIVIL REVISION PETITION Nos.262 and 264 of 2022****COMMON ORDER:**

1. The Civil Revision Petition No.262 of 2022 is filed being aggrieved by the docket order dated 17.01.2022 passed in E.P.No.27 of 2019 in O.S.No.414 of 2023 on the file of XII Additional Chief Judge, City Civil Court.
2. The Civil Revision Petition No.264 of 2022 is filed being aggrieved by the docket order dated 17.01.2022 passed in E.P.No.28 of 2019 in O.S.No.415 of 2023 on the file of XII Additional Chief Judge, City Civil Court.
3. Since the revision petitioner in both the Civil Revision Petitions is one and the same and the issue to be adjudicated is also one and the same, they are heard together and being disposed of by way of this common order.

4. The respondent No.1 in C.R.P No.262 of 2022 herein filed a suit in O.S.No.414 of 2018 on the file of Chief Judge, City Civil Court against M/s. Vensa Laboratories Private Ltd., representing by its Managing Director, for recovery of Rs.24,40,808/- and the said suit was decreed by judgment dated 30.07.2018. Subsequently, the respondent No.1 filed E.P.No.27 of 2019 against the Revision Petitioner, who said to have worked as Managing Director in the Judgment-Debtor Company. The revision petitioner contested the E.P and the Court below attached the house property of the Civil Revision Petitioner.

5. Likewise, the respondent No.1 in C.R.P No.264 of 2022 herein filed a suit in O.S.No.415 of 2018 on the file of Chief Judge, City Civil Court against M/s. Vensa Laboratories Private Limited represented by its Managing Director, for recovery of Rs.24,24,908/- and

the said suit was decreed by judgment dated 30.07.2018. Subsequently, the respondent No.1 filed E.P.No.28 of 2019 against the Revision Petitioner, who said to have worked as Managing Director in the Judgment-Debtor (for short 'J.Dr') Company. The revision petitioner contested the E.P and the Court below attached the house property of the Revision Petitioner through impugned order. Being aggrieved by the impugned orders, the petitioner came with the present revisions.

6. Heard Sri Vedula Srinivas, Learned Senior Counsel for Vedula Chitralekha, learned Counsel for the Revision petitioner and Sri P.Krishna Arjun, the learned Counsel for the respondent No.1 in both the petitions.

7. The learned Senior Counsel for the revision petitioner submits that the Court below erred in

allowing the execution petition as the schedule property does not belong to the J.Dr., and as a matter of fact the attached property is the exclusive property of the Civil Revision Petitioner, who is the Former Managing Director of J.Dr firm. Further the Decree Holder (D.Hr) did not impleaded the Civil Revision Petitioner either in the suit or the Execution Petitions. The Court below ought to have called upon the D.Hrs to show that the subject property belongs to the J.Dr-company instead of placing the burden on the J.Dr to prove that the property does not belong to it. The Court below failed to see that the property of the former Managing Director of the J.Dr cannot be brought to sale for the discharge of decretal amount due from the J.Dr to the D.Hr, more particularly when the said Managing Director has not been impleaded either to the suit or to the E.P. Proceedings.

8. The learned Senior Counsel for the petitioner further submits that the execution petition is not filed in the proper form in accordance with Order-XXI, Rule-66 and 64 of Civil Procedure Code. The property mentioned in the execution petition does not belongs to the J.Dr Company and the said property is the absolute, exclusive and personal property of the revision petitioner, who worked as the Managing Director of the J.Dr Company. The said property is covered under Sale Deed No.815 of 2001 on the file of SRO, Bowenpally and Sale Deed No.544 of 2002 on the file of SRO, Kukatpally. The decree was passed against the J.Dr company only, but not against the persons represented by the J.Dr company and hence the decree to be treated as estate decree passed against the J.Dr company and its properties and therefore, both the Civil Revision Petitions are liable to be allowed by setting the impugned orders.

9. The learned Senior Counsel for the Revision Petitioner in support of his contentions placed reliance on the following Judgment:

***1. Hrushikesh Panda Vs., Indramani Swain and another*¹**

10. On the other hand the learned Counsel for the respondents No.1 contends that the Court below rightly allowed the execution petitions attaching the immovable property of the petitioner, being the Managing Director of the J.Dr. Company. The execution petition was filed on 03.01.2019 and sought attachment of immovable property of the petitioner and the same is not erroneous. The petitioner being the Managing Director of the respondent No.2-Company gave evidence admitting the liability and even sought lenience of the trial Court to pay the decretal amount in installments. The order of attachment was passed by

¹ AIR 1987 ORISSA 79

the Execution Court on 17.01.2022 and the petitioner having filed counter in the Execution Petition and having contested the matter, clandestinely sold the property on 28.01.2022 through document No.318/2022 on the file of Sub-Registrar, Balanagar, Hyderabad. The fact of sale was not brought to the notice of this Court by the petitioner and thereby played fraud on this court. The Court below having considered the counter filed by the Judgment-Debtor and having heard the counsel for the parties, has rightly passed an order attachment of property on 17.01.2022 under Order XXI, Rule-54 of CPC and the same does not warrant any interference by this Court.

11. The learned Counsel for the respondents No.1 further submits that as the decree and judgment was passed on admission, no appeal can be filed and the respondents.No.1 having waited for nearly three years

filed the execution petitions on 03.01.2019 seeking attachment of immovable property of the petitioner and the execution court having given sufficient time, has rightly passed an order of attachment of immovable property. The petitioner in the capacity of Managing Director of Respondent No.2 (J.Dr. Company) came into witness box, gave evidence and sought time to pay the decretal amount in the form of installments and he cannot plead ignorance of suit and therefore the court below has rightly passed an order of attachment under impugned orders and there are no valid grounds in the petitions and requested to dismiss both the Civil Revision Petitions.

12. The learned Counsel for the respondent in support of his contention, placed reliance on the following Judgment:

Shakthi Concrete Industries, Hyderabad & Anr. Vs. Ganesh Gupta²

13. After hearing both sides and upon perusing the record this Court is of the considered view that the petitioner earlier worked as Managing Director of M/s Vensa Laboratories Pvt Ltd. The respondents No.1 in both the petitions filed two different suits for recovery of money against the respondent No.2-company. In both the matters the petitioner herein filed written statements admitting that the defendant-company received the material from the plaintiff-companies, but due to some unavoidable circumstances the defendant was unable to pay the amounts to the plaintiff-companies in time and he is willing to pay the amounts as per the schedule in easy installments only as per the invoices raised by the plaintiff-companies. Thereafter the petitioner filed chief-affidavits in both the suits, before the Court below on 05.12.2017 and gave an

² 2015 (6) ALD 739 (DB)

undertaking, and the relevant portions of the chief-affidavits are as follows:

- “3. I submit that I and my company willing to pay the amounts as per the schedule in easy installments only as per invoice raised by the plaintiff,. It is submitted that I and my other directors of the company are ready to pay the amount as agreed by me as per the invoice mentioned in the plaint for the actual materials received.
5. I submit that I and my other directors are not disputing about the legal notice dated 25.03.2013 and I submit that I and my other directors are very fair enough in paying the admitted invoice amounts as per the invoice raised by the plaintiff in easy installments as of now I am not running the said business in the above said company”.

14. A close reading of the chief-affidavit and cross-examination of the revision petitioner, as DW1 in the suits, shows that he has given undertaking before the Court below that he and other directors are fair enough to pay the amount as per the schedule in easy installments as per the invoice raised by the plaintiff-companies without interest by his company as he is not

running the said business in the said company and basing on the said admission of the petitioner the suits were decreed.

15. As the petitioner or the defendant-company failed to pay the decretal amount the respondent Nos.1/plaintiffs were constrained to file the Execution Petitions for realization of the decretal amount by attaching the immovable property, which was in the name of the petitioner. Once the petitioner has given an undertaking before the Court below in the written statements as well as in the chief-affidavits and in the cross-examination to pay the amount personally, now he cannot take a ground that he is not a party either in the suit or in the execution petition and cannot question the attachment of the property. The judgment relied on by the learned counsel for the petitioner in *Hrusihkesh Panda Vs. Indramani Swain and another*

(*supra* 1) is not apply to the instant case, as the petitioner has given an undertaking to pay the amount before the Court below.

16. Moreover, the respondent No.1 in their counters brought to the notice of this court that after passing the impugned orders in E.P.Nos.27 and 28 of 2022 dated 17.01.2022, the petitioner sold the E.P. schedule property on 28.01.2022 to third parties and filed these revision petitions, without disclosing the same before this Court and claiming that he is the owner of the property as on the date of filing of the Civil Revision Petitions, which clearly shows that the petitioner suppressed the said fact and obtained interim orders from this court.

17. The principles laid down by the Hon'ble Supreme Court of India in **Western Press Pvt. Ltd., Mumbai Vs., Custodian and others**³ apply to the instant case.

The relevant portions of the said judgment are as follows:

“9. The questions, which loom large for consideration in this appeal, are as to what are the legal consequences flowing from the consent order of the Special Court dated 5.7.95 and the affidavit filed by Mr. Milan Dalal on 28.7.95 as the Chairman of the appellant-company? and do they suffer any legal infirmities such as want of registration, want of authority and mistake of fact so as to render them either non-est or unenforceable? If it is held that the consent order dated 5.7.1995 and the affidavit dated 28.7.1995 are binding upon not only the parties but upon the appellant, as one who has undertook to abide by certain consequences and such an undertaking was given to secure any or some benefit for any one or more of the parties from the Court, the facts such as the appellant not being itself a party in the proceedings before the Court and it was only a third party and that the property in question is of the appellant and that the appellant is neither a notified party nor one claiming through such notified party or the judgment debtor pale into

³ (2001) 10 SCC 703

insignificance and are rendered wholly irrelevant in determining the actual issues arising.

13.. The consent order as also the undertaking given in this case would squarely fall within the exempted category of 'any decree or order of the Court envisaged under Section 17 (2) (vi) and take it outside the excepted category of cases for the simple reason that it does not deal with, as such, any immovable property envisaged in the manner of clause (b) of Section 17 (1) of the Registration Act. In the first instance, the decree/order in question does not comprise any immovable property as such. In any event, in a matter like the one before us where the consent order which came to be passed on agreement as well as the undertaking given in pursuance thereof, was an undertaking to the Court, the words subject-matter of the suit need not be confined to the subject-matter of the plaint or subject-matter of the dispute alone, but would include all that which is made to become part of the proceedings in order to finally and effectively settle all the disputes between the parties. Shorn of all these unnecessary controversies now raised, we are also of the view that in a case where an item of property is referred to in an undertaking given to the Court as one which can be proceeded against in the event of the judgment-debtor failing to pay the decretal amount within the stipulated time, the immovable property does not get ipso facto affected or suffer in anyone of the manner envisaged

under Section 17 (1) so as to require compulsory registration.

(emphasis added)

18. The finding of the above judgment squarely apply to the facts of instant case that in both the suits, the petitioner has given personal undertaking in the written statements, chief-affidavits as well as in the cross-examination for repayment of the suit amounts personally and now he cannot take a different stand that the trial Court cannot attach the property of the petitioner.

19. In view of the same, now the petitioner cannot question the impugned order on the ground that the petitioner is neither a party to the suit or execution proceedings and his personal property cannot be attached and the petitioner also suppressed the fact that he sold the property which is under attachment before filing these two civil revision petitions.

20. The impugned orders passed by the Court below does not suffer from any illegality or infirmity and does not call for any interference of this Court exercising powers under Article 227 of Constitution of India.

21. In view of the above findings, both the Civil Revision Petitions are liable to be dismissed as devoid of any merits and accordingly dismissed. There shall be no order as to costs.

22. Miscellaneous petitions, if any pending in these revisions, shall stand closed.

JUSTICE K. SARATH

Date.03.10.2023

***Note: LR copy to be marked
B/o***

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