

ORDERS ON I.A NOS.4 AND 5

The counsel for the applicant/DHR has filed IA No.4 under Order 47 Rule 1 of CPC to review the order dated: 14.12.2018 passed by the predecessor in office by rejecting IA No.2 filed by the objector under Order 21 Rule 58 of CPC stating that, though there is an order of attachment of immovable property, but the said application came to be rejected on the ground that, as there is no order of attachment, therefore review of the order is necessary as the same suffers from error apparent on record. On these grounds, pray for allowing IA No.4 by condoning the delay of 33 days in filing review application as prayed in IA No.5 filed under Sec.5 of the Limitation Act.

2. Records reveal that, JDR or objector did not file objections to the IAS.

3. Heard and perused the written arguments along with material on record.

4. The point that arise for my consideration is:-

“Whether I.A. No.4 filed under Order 47 Rule 1 of CPC is deserves to be allowed by condoning the delay as prayed?”

5. My answer to the above point is in the negative for the following:-

REASONS

6. It is worth to note that admittedly, DHR has filed the above numbered for execution of Judgment and decree passed in OS No.1132/2010 dated: 26.2.2013. The JDR appeared before this court, but did not comply the decree, Accordingly the DHR took an order of arrest warrant against the JDR. Records reveal that, JDR was in civil prison and thereafter he has been released. In the meanwhile, one R.Subramani being the objector appeared before this court and filed IA No.2 under Order 21 Rule 58 of CPC stating that, he is the owner in possession of the property acquired under the Registered Gift Deed dated: 19.11.2004 and Release Deed dated: 20.3.2005. The DHR filed objections, but, objector did not adduce evidence when the case was posted for enquiry. Accordingly the predecessor in office having heard on both sides rejected IA No.2 with an observation that, when there is no order of attachment, then question of release of property does not arise.

7. It is pertinent to note that, as rightly urged by the counsel for the DHR if we go through the materials on record, it is evident that as per the order of this court, the petition property was being attached and reported by

the concerned baliff on 3.8.2013 itself. But, none of the parties including objector/aggrieved party have challenged the orders passed by the predecessor in office on IA No.2 dated: 14.12.2018.

8. At this stage, the counsel for the DHR has come up with present applications stating that, the said order is illegal, erroneous and error apparent on the face of record.

9. A plain reading of Section 114 of CPC r/w Order 47 Rule 1 CPC makes it clear that, *“any person considering himself aggrieved- (a) by decree or order from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed by this Code, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit”*.

10. So at this juncture a question that arises before this court is whether an order of erroneous decision on I.A. No.2 passed by the predecessor in office comes under the purview of jurisdiction of this court so as to review under the aforesaid provisions or not?

11. It is worth to note that, admittedly, the DHR is not the aggrieved party. Further, the said IA No.4 Review application is not filed

within 30 days from the date of erroneous order. The reasons shown in subsequent IA No.5 to condone the delay in filing the Review Application are not sufficient. Therefore having regard to the facts and circumstances of the case, I am of the opinion that, at this stage this court cannot review the earlier order of the predecessor in office as appellate jurisdiction. For these reasons, written arguments filed by the counsel for the DHR do not have weight and cannot be accepted. Consequently, I.A. No.4 and 5 are liable to be dismissed.

12. However, it is made clear that, there is no impediment to take further steps by the DHR as against the JDR based on order of attachment of immovable property shown in the petition schedule in accordance with law. Hence, I answer the point raised for consideration in the negative and proceed to pass the following:-

ORDER

I.A. No.4 filed under Order 47 Rule 1 of CPC along with IA No.5 filed under Sec.5 of the Limitation Act by the counsel for DHR are hereby dismissed.

No orders as to costs.

Hence, DHR is hereby directed to take further steps on the next date of hearing without fail. Call on 4.1.2020.

V ACC &SJ, Bengaluru.