

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P No.D-450 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

Present:-

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

1. For orders on M.A No.3798/2020
2. For orders on M.A No.3799/2020
3. For hearing of main case

18.08.2020

Mr. Muhammad Asif Arain, advocate for petitioners

ABDUL MAALIK GADDI:-J

1. Urgent application is disposed of.

2&3. Through this constitutional petition the petitioners have assailed the legality and propriety of order dated 20.12.2019 passed by learned IVth Senior Civil Judge Hyderabad, whereby, the application filed by petitioners herein under Section 47 read with Section 151 CPC was dismissed as well as order dated 10.03.2020 passed by learned IIIrd Additional District Judge, Hyderabad, whereby Civil Revision Application bearing No.08 of 2020 filed against order dated 20.12.2019 was also dismissed.

It appears from the record that respondent herein had filed a First Class Suit No.56 of 2010 for Declaration, Possession, Specific Performance of Contract and Permanent Injunction against the deceased father of petitioners herein, which was decreed vide judgment and decree dated 19.08.2016 & 23.08.2016 respectively, whereby plaintiff/respondent herein was directed to deposit balance sale consideration of Rs.1,30,000/- with the Nazir of learned Trial Court within a period of 30 days. Though the appeal bearing No.171 of 2016 was filed against the said judgment and decree but the same was dismissed vide order dated 15.05.2017 passed by learned IVth Additional District & Sessions Judge, Hyderabad. There is nothing on record whether any civil revision application has been filed against the concurrent findings in favour of the plaintiff/respondent or not. However, it is noted that the plaintiff/respondent herein filed Execution Application No.94 of 2018 for execution of the decree, against which the petitioners herein filed an application u/s 47 CPC r/w Section 151 CPC on the ground that since the plaintiff/respondent herein has failed to deposit the balance sale consideration within time, as directed to him in decree, therefore, execution application is not maintainable which, as mentioned supra, was dismissed up-till the learned Appellate Court.

It is argued by the learned counsel for the petitioners that the impugned orders dated 20.12.2019 and 10.03.2020 passed by the learned Courts below are against the law and on facts and the learned Courts below while passing the impugned orders have ignored the very valuable rights of the petitioners involved in this case, therefore, he prayed that the impugned orders may be set aside and the execution application filed by respondent herein may be dismissed. In support of his arguments he has not cited any case law.

We have heard the learned counsel for the petitioners at a considerable length and have also perused the record so available before us.

Record shows that the First Class Suit No.56 of 2010 filed by the plaintiff/respondent herein was decreed upto the level of 1st appellate Court and there is nothing on record that against said judgment and decree the petitioners have filed any civil revision. It appears that the judgment and decree already in favour of the respondent/plaintiff is still intact. Merely arguing that by not depositing balance consideration amount in time by respondent/plaintiff, the petitioners have been seriously prejudice is not sufficient and we are not impressed with this argument for the reasons that the judgment and decree in the suit have attained finality. Moreover, it was under the discretion of Trial Court to enhance the time for deposit of balance amount, for which the Trial Court has given satisfactory reasons.

During the course of arguments we have gone through the impugned orders and say that the learned Presiding Officers of the Courts below have dealt with all these aspects of the case quite comprehensively in light of all the relevant laws dealing with the matter and now before us the petitioners are unable to demonstrate that the impugned orders, by any means, suffer from any illegality, miscomprehension or non-appreciation of documents available on record. The case and claim of the petitioners has been dismissed by the Presiding Officers of Courts below on the ground, as stated supra and the petitioners have not been able to satisfy this Court on either of the grounds as mentioned in the memo of petition to interfere with the impugned orders.

In view of the above the instant constitutional petition stands dismissed in limine being bereft of merits alongwith listed application. Office is directed to immediately send a copy of this order to learned Trial Court for information and compliance.

JUDGE

JUDGE