

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No. 1124 of 2015

ORDER:

This Revision is filed challenging the docket order dated 08.10.2014 in E.A.No.245 of 2014 in E.P.No.72 of 2014 in O.S.No.2409 of 2010 of the VII Senior Civil Judge, City Civil Court, Hyderabad.

The first respondent obtained a decree for recovery of money against the second respondent and filed E.P.No.72 of 2014 seeking attachment and sale of E.P.Schedule property.

The petitioner herein filed claim petition E.A.No.245 of 2014 under Order 21 Rule 58 of the Code of Civil Procedure, stating that the decree cannot be executed and that the suit itself is collusive suit. He further contended that the second respondent had alienated the E.P.Schedule property to him, much before the attachment of the said property on 29.04.2014. He also pleaded that certain proceedings before the District Consumer Redressal Forum and Criminal Court are pending against the second respondent.

It appears that initially notice was issued by the Court below to the second respondent, but, subsequently, the second respondent was set *ex-parte* in the E.P. The Court below, by the impugned docket order, dispensed with the service of notice to the second respondent.

Challenging the same, this Revision is filed.

Learned counsel for the petitioner contended that service of notice on the second respondent is mandatory in the claim petition and the Court was not right in dispensing with it since it had previously directed service of notice on the second respondent.

Learned counsel for the first respondent however refuted the said contention and pointed out that the petitioner, having filed the claim petition, should not concern himself with the service of notice on the second respondent, who is anyway set *ex-parte* in the main E.P. and that the petitioner

should ensure that his claim petition is adjudicated quickly.

I have noted the submissions on both sides.

Admittedly, the second respondent has been set *ex-parte* in the E.P. filed by the first respondent against him. This indicates that he has no interest in contesting E.P. It is the petitioner who is making claim in respect of the E.P. Schedule property. Therefore, the petitioner should establish that his claim is superior to that of the respondents in the E.P. Schedule property and succeed in the E.A. The absence of the second respondent or non service of notice in the E.A. on the second respondent would not cause any prejudice to the petitioner.

Therefore, I do not find any merit in the Revision and is accordingly dismissed.

There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

M.S.RAMACHANDRA RAO

09.09.2015

vhb