

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3500 of 2013 & C.C.No.2221 of 2013

COMMON ORDER:

Heard Sri N.Aswartha Narayana, learned counsel for the petitioner and Maheswara Rao Kunchem and Sri M.Sudhir Kumar, learned counsel for respondent Nos.1 and 2 respectively.

2. This Revision Petition is filed challenging the order dt.12-03-2013 in E.A.No.86 of 2013 in E.A.No.124 of 2012 in E.P.No.169 of 2009 in O.S.No.332 of 2005 of the Principal Senior Civil Judge, Anantapur.
3. Petitioner herein is the decree holder who obtained a decree for recovery of money against respondent Nos.2 and 3 on the basis of a mortgage. She filed E.P.No.169 of 2009 for realization of the decretal amount.
4. While so, 1st respondent herein filed a claim petition invoking Section 47 CPC vide E.A.No.124 of 2012.
5. While the said application is pending, alleging that 1st respondent was making constructions in the E.P. schedule property without any right therein and it would create problems at the time of sale and delivery of property to the auction purchaser, E.A.No.86 of 2013 was filed by the petitioner under Order 39 Rules 1 and 2 CPC seeking temporary injunction restraining 1st respondent from making any construction.
6. Counter affidavit was filed by 1st respondent opposing the same.
7. By order dt.12-03-2013, the Court below dismissed the said

application directing the 1st respondent to proceed with the claim petition without fail observing that if any constructions are made by the claim petitioner/1st respondent, it will be at his risk and that the property will be sold as if there are no constructions. It further observed that it will be the 1st respondent who would suffer, if the claim petition is rejected and he would not be entitled to any notice at the time of delivery of possession in case of sale since the sale is subject to the result of his petition E.A.No.124 of 2012.

8. Having regard to the order passed by the Court below, which in my opinion adequately protects the interests of the petitioner, I am of the opinion that the Revision Petition can be disposed of directing the Court below to decide E.A.No.124 of 2012 within a period of two months from the date of receipt of a copy of this order. Therefore, the Civil Revision Petition is disposed of accordingly.
9. Coming to the C.C.No.2221 of 2013, this Contempt Case is filed by the petitioner alleging that there was an order of interim injunction granted by this Court on 12-08-2013 in C.R.P.M.PNo.4675 of 2013 in the above Revision Petition and that the 1st respondent has disobeyed the same.
10. Except stating that 1st respondent was not inclined to implement orders of this Court, in spite of having knowledge of the same, and that he had intentionally disobeyed them, no allegation as to how the order has been violated is mentioned in the affidavit filed in support of the Contempt Case. Except issuing the legal notice dt.07-09-2013 alleging that 1st

respondent was proceeding with the construction, no photographs or third party affidavits are filed by the petitioner.

11. Therefore, I am of the opinion that the petitioner has failed to prove that 1st respondent had willfully disobeyed the order granted by this Court on 12-08-2013 in C.R.P.M.P.No.4675 of 2013 in C.R.P.No.3500 of 2013. In any event, since the Revision Petition has been disposed of directing the Court below to decide the claim petition E.A.No.124 of 2012, I am of the view that the Contempt Case is liable to be closed.
12. In the result, the Civil Revision Petition is disposed of and the Contempt Case is closed. No costs.
13. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-09-2015

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