

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5756 of 2015

ORDER :

Heard the learned counsel for the petitioner and the respondents.

2) The present revision is filed under Section 115 of C.P.C impugning the order of the learned District Judge in I.A. No.993 of 2015 in C.M.A. No.12 of 2015 granting interim stay against implementation of proceedings in I.A. No.56 of 2002 dated 31.12.2014 pending notice to respondents by 10.08.2015 passed on 30.07.2015. In fact in the debtor I.P from the wording 'shall' as per Section 20 of the Act for appointment of an interim receiver of the property shown in the insolvency application or other property of the debtor insolvent/applicant if any to take immediate possession and to manage which it appears was not done in this case. It is after adjudication of the debtor as insolvent among the property shown in the insolvency application, the debtor moved I.A. No.56 of 2002 to exempt the said item of property from sale, saying it is within the purview of Section 60 of C.P.C and liable to be exempted in the course of adjudication under Sections 27 and 28 of the Act. That application was allowed by the learned Senior Civil Judge-cum-insolvency Court (to say in this regard originally ended in dismissal and the appeal was allowed reversing the dismissal order and revision preferred was allowed by remanding for fresh

disposal and consequent to it finally allowed as the case may be). It is impugning said order of allowing the application exempting the property of considering as part of the exempted means of the insolvent-debtor applicant under Section 60 of C.P.C, the C.M.A is maintained and against the implementation of the order, the stay was obtained from the District Court.

3) It is impugning said stay order of the District Court supra in the pending C.M.A, the revision is maintained. The revision petitioner herein who is the debtor insolvent applicant already filed W.P. No.16337 of 2015 and there was a status quo order dated 23.06.2015 pending notice and filing of counter by respondents/creditors in ordering status quo regarding cancellation of the alienation of the sale of the said so called exempted house property, since sale affected and document registered vide No.387/2002 dated 16.04.2002 and steps while are taking to cancel the sale deed and the order was later extended on 17.06.2015 vide W.P.M.P.No.21226 of 2015 till 22.06.2015 and the writ petition is still pending. The petitioner if at all to say the parallel C.M.A proceeding – during pendency of the writ petition may lead to conflicting expressions, the remedy is to seek for C.M.A record to decide if at all with writ petition. Beyond expressions, the remedy is to seek for C.M.A record to decide if at all with writ petition. Beyond that and beyond to ask the lower appellate Court to vacate the stay or to dispose of the C.M.A expeditiously, cannot be allowed to run a third

proceeding by this revision in the factual background, besides no merits to admit the revision otherwise.

4) Having regard to the above, the revision is disposed of before admission, by left open to the petitioner to seek remedy of asking the writ Court to call for C.M.A record to decide along with the writ petition if any or to file application to vacate the stay or to decide the C.M.A itself – expeditiously which is the available and proper recourse to avoid multiplicity of litigations in multiple forums.

5) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

29.12.2015
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