

*THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE A. V. SESA SAI*

CIVIL REVISION PETITION No.5061 of 2016

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

This civil revision petition under Section 115 C.P.C. is preferred by the judgment debtor in E.P.No.15 of 2013 in A.R.C.No.61 of 2012 on the file of the learned Principal District Judge, Prakasam at Ongole. He filed E.A.No.323 of 2016 in the said E.P. under Order 21 Rule 106 C.P.C. to set aside the order dated 23.09.2014 setting him *ex parte* in E.A.No.3 of 2014; to permit him to file his counter; and to pass such other orders as may be deemed just and proper.

By the order under revision, the Court below permitted the petitioner/judgment debtor to participate in the proceedings but curtailed his right to file a counter or recall the witnesses already examined. In the result, his application was allowed subject to the rider that he would not be permitted to file his counter and would be at liberty only to participate in the further proceedings without having a right to recall the witnesses already examined.

Heard Sri Naga Praveen Vankayalapati, learned counsel for the petitioner/judgment debtor, and Sri Jyothi Prasad, learned counsel representing Sri K. Sarvabhouma Rao, learned counsel on caveat for the respondent No.4/claim petitioner.

As the other respondents have no role to play in the C.R.P., it is not necessary to put them on notice, in the light of the order proposed to be passed by this Court.

Perusal of the order under revision reflects that the Court below took note of the fact that the claim petitioner in E.A.No.3 of 2014 in E.P.No.15 of 2013 had also filed O.S.No.67 of 2013 for specific performance of an agreement of sale said to have been executed by the petitioner/judgment debtor. It is an admitted fact that the petitioner/judgment debtor filed his written statement in the said suit. However, as he failed to take necessary steps within time in the E.A. and had allowed the cross-examination of the witnesses produced by the claim petitioner to be completed, the Court below was of the opinion that he

could not be permitted to turn back the clock and reopen the proceedings. Reliance was placed on case law in this regard.

Though this Court finds no material irregularity in the opinion expressed by the Court below, the fact remains that the petitioner/judgment debtor already filed his written statement in O.S.No.67 of 2013, wherein he denied the alleged agreement of sale under which the claim petitioner in E.A.No.3 of 2014 is asserting rights against him. That being so, the Court below ought to have permitted the petitioner/judgment debtor an opportunity to put forth his case in E.A.No.3 of 2014 also.

The C.R.P. is accordingly allowed setting aside the observations made by the Court below in the order under revision and permitting the petitioner/judgment debtor to file his counter and cross-examine the witnesses already examined, upon filing appropriate applications, within five weeks from the date of receipt of a copy of this order. In the event the petitioner/judgment debtor fails to do so within the time stipulated above, the order under revision shall stand restored and this revision petition shall stand dismissed in consequence.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

A.V. SETHA SAI, J

Date:28.10.2016

Note:-

Issue CC in two days.

B/o

GJ