

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

C.R.P. No.438 of 2016

ORDER:

This Civil Revision Petition is filed challenging the order dt.21.12.2015 in E.P.No.104 of 2015 in O.S.No.33 of 2007 of the I Additional Junior Civil Judge, Eluru.

2. Petitioner herein is the Judgment Debtor in the above E.P. The respondent had obtained a decree against the petitioner for eviction on 05.11.2014. The decree directed the petitioner to vacate the plaint schedule property within four (04) months from the date of decree and it also directed to pay damages.

3. After the decree, E.P.No.104 of 2015 was filed by the respondent under Order XXI Rule 35 CPC to deliver E.P. schedule property to the respondent by giving direction to the Amin.

4. Counsel for the petitioner contends that the petitioner questioned the said decree in appeal before the District Court and till the said appeal is decided, the Court below should not have directed delivery of E.P. schedule property by allowing E.P.No.104 of 2015. He further contended that no opportunity was given to the petitioner to file a counter in the E.P.

5. Admittedly the E.P. was filed on 20.06.2015. Petitioner made appearance on 04.09.2015 through his counsel. The Court below recorded that in spite of being given several opportunities to file a counter, except seeking adjournments, the petitioner did nothing and that is why he was set ex parte in the E.P. The Court had waited till 21.12.2015, more than 3 ½ months after the petitioner entered appearance, to pass the impugned order. The petitioner therefore cannot take advantage of his own wrong in not

filing a counter in the Court below.

6. Admittedly no stay of execution of the decree in O.S.No.33 of 2007 had been granted to the petitioner by the District Court in the appeal filed by the petitioner. In the absence of any stay granted by the District Court, the Court below has not committed any error of jurisdiction in allowing E.P.No.104 of 2015.

7. Therefore I do not find any merit in this Civil Revision Petition and it is accordingly dismissed. There shall be no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

15th July, 2016
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