

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P. No.6128 OF 2009

ORDER:

Heard Mr.N.Krishna Murthy for revision petitioner. None appears for respondents 1 and 2.

The revision is directed against the order dated 29.07.2009 in E.A.No.39 of 2009. The operative portion of the order reads as follows:

"This Execution Application filed by the petitioner/Auction Purchaser U/S.151 CPC praying the Court to reopen the Execution Petition by setting aside the Order of termination of the Execution Petition dated 19-1-2009 and for such other reliefs.

Counsel for respondent reported no objection. Heard the petitioner and the petition is allowed. The judgment-debtor is directed to pay poundage amount of Rs.3,885/- and 5% of bid amount to the Auction Purchaser, failing which the Auction Purchaser is at liberty to recover the said amount from the date of sale i.e.22-10-2008 till the realization at 6%."

Mr.Krishna Murthy contends that the order does not convey any meaning, it appears the executing Court has exceeded the scope of prayer and the order suffers from patent illegality though appears to be correct, close reading of chronology of events in E.P. No.853 of 2007 would suggest that the executing Court was prevented from taking up further steps pursuant to conduct of sale on 22.10.2008, for on 19.01.2009, the executing Court on the memo filed by D.Hr terminated the E.P. proceedings. The contentions of petitioner are merely noted only to be rejected in *limini*. The order dated 19.01.2009 reads as follows:

"Counsel for D.Hr filed F.S.memo stating that the J.Dr paid an amount of Rs.60,000/- towards the full satisfaction of the E.P. amount.
Hence, the E.P. is terminated and F.S. in recorded."

From the above, it is clear that before any right or interest is created in favour of revision petitioner/auction purchaser, the D.Hr filed full satisfaction memo and the executing Court was right in terminating the execution proceedings. When the prayer for restoration of E.P. is made, the executing Court has imposed condition on the judgment debtor and directed to pay poundage amount and 5% of bid amount to the revision petitioner. This Court is of the view that no exception to the procedure followed by the executing Court can be taken. If the 2nd respondent/judgment debtor is yet to comply with the condition imposed by the executing Court through order dated 29.07.2009, it is open to the revision petitioner to recover the same with interest at 6% per annum as directed in the order under revision.

The revision fails and is dismissed. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT, J

Date:04.08.2016
Stp