THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.97 & 98 of 2015

-

COMMON ORDER:

The petitioners, who are the claimants, filed these Civil Revision Petitions under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for short) assailing the common order dated 29.12.2014 of the learned Senior Civil Judge, Sathupalli, Khammam District passed in E.A.No.62 of 2014 and E.A.No.63 of 2014 in E.P.No.32 of 2012.

I have heard the submissions of the learned counsel for both sides and perused the material record.

By the impugned order the Court below dismissed the applications filed under Section 5 of the Limitation Act requesting to condone the delay of 60 days in filing the applications for restoration of the Execution Applications filed under Order 21 Rule 58 CPC. The Court of Execution in the impugned order had held that Section 5 of the Limitation Act cannot be invoked as the said provision of law has no application to Execution Proceedings. However, in view of the ratio decision of this Court in **Ch. Krishnaiah v. Ch. Prasada Rao**[1] it is now fairly conceded that the above finding of the Court below is incorrect and that the binding ratio in the above decision clearly lays down that an application under Section 5 of the Limitation Act is maintainable. Since the trial Court did not consider the applications on merits, the learned counsel for both the sides submitted that it is just and fair to allow this civil revision petitions and direct the Court of Execution to reconsider the applications on merits, in accordance with law and pass appropriate orders.

In the result, the Civil Revision Petition is allowed and the impugned common order is set aside and the Court of Execution is

directed to dispose of the applications in E.A. Nos. 62 and 63 of 2014 afresh, on merits, and in strict accordance with the procedure established by law.

In view of the fact that a sale certificate has already been issued and police aid is also granted for obtaining delivery of the property, this Court is of the well considered view that it is just and fair to direct both the parties to maintain *status quo* until the disposal of the above said applications by the Court below as now directed in this order. However, the status quo order shall be in force for a period of two months from today. Accordingly, the Court below is directed to dispose of the said E.A.Nos. 62 and 63 of 2014 within the said time frame as directed in these orders. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

_____

JUSTICE M. SEETHARAMA MURTI

25th February, 2016
Js.

---

[1] AIR 2010 AP 19