THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No.1352 OF 2011

ORDER:

This revision petition is filed against the order, dated 18.01.2011, passed in I.A.No.3 of 2015 in I.P.No.3 of 2002 by the Senior Civil Judge, Addanki, wherein the Court below has directed for issuance of warrants against the petitioners pursuant to the order, dated 26.05.2007, passed in I.P.No.3 of 2002, as confirmed by order, dated 12.06.2008, passed in A.S.Nos.284 and 289 of 2007 by the District Judge, Ongole.

2. The brief facts of the case are that respondent No.1 filed I.P.No.3 of 2002 against respondent No.2 and the petitioners for declaring respondent No.2 as insolvent and the sale deeds executed by respondent No.2 in favour of the petitioners as sham documents. The trial Court, by holding that Exs.A2 and A3 were executed only to delay and defraud the genuine creditors, allowed the I.P. with costs adjudicating respondent No.2 as insolvent and by directing that the petition schedule property shall be vested with the Official Receiver for proper administration of the same. Aggrieved by the same, petitioners and respondent No.2 filed A.S.Nos.284 and 289 of 2007, which were dismissed confirming the order passed in the aforesaid I.P. and by making it clear that the

Official Receiver shall take possession of the properties in the adjudication proceedings against the properties vesting on the Official Receiver for realisation and distribution among the creditors the net proceeds. In pursuance of the same, the Official Receiver filed the present I.A. and the Court below by impugned order, dated 18.01.2011, directed to issue arrest warrant to the petitioners. Aggrieved by the same, the present revision petition is filed.

3. Learned counsel for the petitioners submits that without issuing any notice to the petitioners, the impugned order was passed. He also submits that the petitioners are only purchasers from the judgment debtor i.e., respondent No.2 and as such, Section 32 of the Provincial Insolvency Act, 1920 (for short, 'the Act') has no application and the petitioners cannot be arrested. He also submits that the Official Receiver has to take possession of the petition schedule property through due process of law.

4. On the other hand, learned counsel appearing for respondent No.1 submits that the order declaring the sale deeds executed by respondent No.2 in favour of petitioners as sham documents and that the petition schedule property shall be vested with the Official Receiver, has become final and the appellate Court also made it clear that the Official Receiver shall take

possession of the petition schedule property. He further submits that the Official Receiver issued notice to the petitioners and though the petitioners have engaged an Advocate and filed memo on 16.08.2010 to grant time for handing over possession of the petition schedule property as compromise talks are going on with respondent No.1, they have neither come forward to handover possession of the property nor have filed any compromise petition, even after lapse of four months, and as such, the Official Receiver has filed the present I.A. and there is no illegality in the impugned order.

5. It is to be seen that the order adjudicating respondent No.2 as insolvent and declaring the sale deeds executed by respondent No.2 in favour of petitioners as sham documents has become final, because the order passed in the appeal filed by the petitioners against such order has become final. It is also to be seen that when the Official Receiver has issued notice, petitioners engaged an Advocate and sought time for handing over possession of the petition schedule property as compromise talks are going on, and as no steps are taken even after lapse of four months, the Official Receiver has filed the present I.A., under Section 32 of the Act, and the Court below has passed the impugned order.

6. No doubt, a reading of Section 32 of the Act goes to show that if the debtor is absconding or departing from the local jurisdiction with intent to avoid any obligation which might have been imposed on him by or under this Act, the Court can order to issue warrant for his arrest, but in the present case, once the sale deeds executed in favour of the petitioners are held to be sham documents and are executed only to defeat the genuine creditors, it is not stated under what authority the petitioners are continuing in possession of petition schedule property. Further, the petitioners, having agreed to handover possession of the property to the Official Receiver, failed to do so and as such, the Court below having no other option, passed the impugned order. Though learned counsel for the petitioners submits that no notice was issued to the petitioners before passing the impugned order and the petitioners can only be dispossessed by following due process of law, it is clear that the Official Receiver has issued notice to the petitioners and the petitioners engaged an Advocate and sought time to handover possession and as such, it cannot be said that the petitioners rights are affected. Further, there is no justification for the petitioners to squat on the property when the sale deeds executed in their favour were declared as sham documents. In view of the same, I do not see any reason to entertain this revision petition,

under Article 227 of the Constitution of India, so as to interfere with the impugned order passed by the Court below. However, it is made clear that there shall be stay of impugned order for a period of two months from today for handing over possession of the properties, which are subject matter of the I.P. and if the petitioners fail to handover possession of the properties within the time stipulated above, the impugned order revives and the Court below can proceed with further proceedings.

7. With the above direction, the revision petition is disposed of. Miscellaneous Petitions, if any, pending in this revision petition, shall stand closed. No costs.

A. RAJASHEKER REDDY, J

March 15, 2016

MD