

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NOS.3455 AND 3459 OF 2014

COMMON ORDER:

Since these two revisions arise out of same E.P.No.119 of 2013 in O.S.No.89 of 2012 on the file of the Principal Junior Civil Judge, Kothagudem, they are being disposed of by way of this common order.

2. Petitioners herein are the judgment debtors, whereas the respondent herein is the decree holder.

3. The respondent herein filed the above suit seeking recovery of possession and the said suit was decreed ex-parte. Pursuant to the said ex-parte decree, the above Execution Petition was filed against the petitioners herein as the original defendant died after passing the ex-parte decree. The petitioners initially engaged an Advocate, who offered vakalat before the Executing Court, but he did not prosecute the case further. In view of the same, the Executing Court issued warrant of delivery after setting the petitioners ex-parte on 10-04-2014 and the case was posted for orders to 21-04-2014 and 28-04-2014. The petitioners herein filed I.A.Nos.55 and 56 of 2014 under Order XXI Rules, 105 and 106 r/w Section 151 CPC to set aside the ex-parte order and to re-call the warrant of delivery issued on 28-04-2014. The said applications were dismissed, vide impugned order, dated 16-07-2014 on the ground that the petitioners have knowledge about the execution proceedings and in fact, they filed C.M.A.No.7 of 2014, which was pending. Challenging the common order, dated 16-07-2014, the present revisions are filed.

4. Learned counsel appearing for the petitioners submits that though the petitioners engaged an Advocate, who offered vakalat on their behalf, he did not appear on the subsequent dates and hence, they were set ex-parte on 10-04-2014 and that they have no knowledge about the E.P. proceedings. He further submits that C.M.A.No.7 of 2014 does not relate to them and it relates to some other parties. They have filed the applications within 30 days and they should be given an opportunity to contest the execution proceedings.

5. On the other hand, learned counsel appearing for the respondent submits that the applications are filed beyond the period of

30 days.

6. It is clear from the above facts that though the petitioners engaged an Advocate, he did not prosecute the case. The suit was originally filed against the predecessor-in-interest of the petitioners. Now an ex-parte decree is sought to be executed. In the circumstances, the petitioners should be given an opportunity to contest the execution proceedings. As a consequence to this, the warrant of delivery issued on 28-04-2014 is also required to be re-called.

7. Accordingly, both the Civil Revision Petitions are allowed setting aside the impugned common order, dated 16-07-2014 and allowing the applications in I.A.Nos.55 and 56 of 2014. The Executing Court is directed to dispose of E.P.No.119 of 2013 as expeditiously as possible, but not later than 30-04-2016 after giving due opportunity to both parties. No order as to costs. Miscellaneous petitions, if any pending in these petitions shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 19-01-2016

Hsd