

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

CIVIL REVISION PETITION No.1369 of 2016

ORDER:

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This Revision is filed challenging the order dt.25-02-2016 passed by the Junior Civil Judge, Mulug in E.P.No.2 of 2015 in O.S.No.23 of 2011 pending on his file.

2. Petitioner is the J.Dr. in O.S.No.23 of 2011 filed against him by the respondent for declaration of title and recovery of possession in respect of properties in possession of petitioner. The suit was decreed with costs on 07-07-2014.

3. Thereafter the respondent filed E.P.No.2 of 2015 to execute the decree seeking recovery of possession by removing the structures in the land.

4. After receiving notice in the E.P., the petitioner preferred appeal S.R.No.7599 of 2016 before the Principal District Judge at Warangal with delay of 509 days on 28-12-2015. The application for condonation of delay is still pending consideration by the Principal District Judge at Warangal.

5. On 25-02-2006, the Court below rejected the

objection of petitioner for execution of the decree and directed petitioner to be evicted.

6. Learned counsel for petitioner contends that in view of filing of appeal, if execution of the decree granted by the trial Court is allowed to occur, grave and irreparable loss would be caused to petitioner.

7. I am unable to agree with the said submission. The petitioner has filed the said appeal with abnormal delay and the delay in filing the appeal itself has not been condoned. There is no stay of execution of decree passed by trial Court granted in the appeal. Since the executing Court cannot go behind the decree and since the execution of decree has not been stayed in the appeal, I am of the opinion that the Court below is correct in allowing the Execution Petition to proceed.

8. Therefore I do not find any error of jurisdiction in the order dt.25-02-2016 in E.P.No.2 of 2015 in O.S.No.23 of 2011 allowing the E.P. and issuing warrant for delivery of the E.P. schedule property to respondent.

9. The Civil Revision Petition is dismissed at the stage of admission. No costs.

10. However, in any event petitioner succeeds in the appeal preferred by him, he is entitled to seek restitution of

the property invoking Section 144 C.P.C.

11. As a sequel, miscellaneous petitions pending if any,
in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 11-03-2016

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