

*HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+ CIVIL REVISION PETITION No.1490 of 2016

% Dated 10.08.2016

Between:

Sanaka Kiran Kumar

...Petitioner

And

\$ Thadikonda Krishna Murthy and another

...Respondents

! Counsel for the petitioner : Sri V.S.R.Anjaneyulu

^ Counsel for respondents : Sri Sai Gangadhar Chamarthi
Sri P.Nagendra Reddy

< GIST

: ---

>HEAD NOTE

: ---

? Cases referred:

: -Nil-



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No. 1490 of 2016

ORDER:

The revision petitioner is the appellant in A.S.No.1 of 2016. The appeal maintained is against the claim petition filed by him in the execution proceedings E.P.No.107 of 2008 in execution of a decree in O.S.No.194 of 2006 on the file of the learned Addl. Senior civil Judge, Machilipatnam. The execution proceedings are pending between the revision 1st respondent/plaintiff/D.Hr. and revision 2nd respondent/defendant/J.Dr. As the claim petition was dismissed, the statutory appeal (A.S.No.1 of 2006) is maintained and pending the appeal I.A.No.2 of 2016 is filed for stay of execution proceedings in E.P.No.107 of 2008 in O.S.No.194 of 2006. The execution proceedings pending are for delivery of the property in favour of the auction purchaser of the decree under execution. In fact, the revision petitioner claims that he is the auction purchaser in execution of the simple money decree O.S.No.221 of 2006 on the file of the learned Addl. Junior Civil Judge, Machilipatnam obtained against the J.Dr. herein as sole defendant, which is no other than subject matter of the present E.P. It is covered by an equitable mortgage final decree of O.S.No.194 of 2006. The claim petition filed is by further saying that the equitable mortgage is not true and he is a bona fide Court auction purchaser for value of the money decree under execution where the equitable mortgage not brought to Court's notice if true.

2. From the factual scenario, having been unsuccessful in the claim after due enquiry/trial; he maintained the statutory appeal and filed the stay petition supra. The learned I Addl. District Judge before whom the appeal pending and the stay petition came for enquiry, passed a detailed order running into 16 pages by going into the merits of the matter

though the scope of Order XLI Rule 5 CPC, is very limited pending appeal to consider sufficient cause exists to stay on such terms or not. The provision reads that “an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree. No doubt, it says on satisfying with the explanation of sufficient cause, stay can be granted subject to conditions of satisfying with substantial loss may result to the party applied for stay unless there is stay of execution and made application for stay without unreasonable delay and has been undertaken by the applicant for due performance of such decree or order as made ultimately binding upon him.

3. Here, the sufficient cause to be shown is of there is likelihood of his suffering substantial loss and he approached the Court without unreasonable delay which are the main criteria for granting stay no doubt subject to the further criteria of the applicant to express readiness to furnish security for the due performance of the decree under execution sought for stay. Here it is not required to dwell into the detailed merits of the matter as to ultimate success or not in the appeal but for leave it for final decision of the appeal after detailed and full dressed enquiry. Thus in the stay application, but for prima facie satisfaction of the existence or not of sufficient cause pending the statutory appeal from the main question involved herein to decide is genuineness of the decrees and any preference which auction purchaser of the two decrees to be given that as to the auction purchaser (claimant) of the simple money decree under execution or so called earlier mortgage and from final decree subsequently obtained and in execution brought to sale and knocked in favour of claim petition 1st

respondent auction purchaser whose execution petition for delivery pending sought for stay. When such is the crucial aspect and against the decision of the claim petition by the executing Court, from the statutory appeal maintained for there exists sufficient cause for stay of execution, pending adjudication of the appeal lis and also for nothing shown of unreasonable delay in filing the application to stay as it is filed with the appeal itself within the period of limitation to the appeal and if stay not granted from the claim there is likelihood of suffering substantial loss and when ready to furnish security it is a case for granting stay and same not properly considered by the Court below under the impugned order.

4. Having regard to the above, the lower Court should not have dwelt into the minute merits of the matter in detail running into several pages in considering the requirements of Order XLI Rule 5 of CPC apart from should not have dismissed the application for stay, by as if deciding whole appeal claim on merits at this stage. The order under revision is thereby liable to be set aside.

5. Accordingly and in the result, the revision is allowed by setting aside the dismissal order dated 10.03.2016 on the file of the learned I Additional District Judge, in I.A.No.2 of 2016 in A.S.No.1 of 2016 and by allowing the same granting stay forthwith of execution proceedings pursuant to mortgage final decree in O.S.No.194 of 2006 and the consequential further proceedings of the executing Court of auction sale including delivery of possession to the auction purchaser or his nominee including under E.P.No.107 of 2008 pending; subject to furnishing of security, within fifteen (15) days from date of receipt of the order, for a sum of Rs.3,00,000/- (rupees three lakhs only) to the satisfaction of the executing Court of immovable property by the appellant-stay

petitioner(Revision petitioner), for due performance of the decree ultimately to be bound on the J.Dr. also on being a claimant subject to result of appeal. Any non-compliance of above conditions, ceases the operation of stay, without further reference to this Court so as to proceed further by the executing Court. At this stage, the learned counsel for revision 2nd respondent sought for early disposal of the appeal within a timeframe and the revision petitioner accepted for it, but for transferring the case to some other Court from likelihood of feeling prejudice to the result of the revision and already pre-judged the appeal is covered by the dismissal order of the stay petition and it may have little influence ultimately on the final result. After hearing both sides from the submissions supra and from their arriving consensus, the appeal is transferred to the Principal District Judge, Krishna District at Machilipatnam, with a direction to decide the appeal preferably within two months from the date of receipt of this order uninfluenced by the stay petition dismissal order observations, but for on own merits including with reference to the expressions covered in the order.

6. Pending miscellaneous petitions, if any, in this revision, shall stand closed. No order as to costs in the revision.

Dr. B. SIVA SANKARA RAO, J

Date: 10.08.2016

Note: L.R Copy to be marked.

b/o.

Vvr