

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA
RAO**

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CIVIL REVISION PETITION No.791 of 2016

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ORDER:

This Civil Revision Petition is filed challenging the order dated 14.10.2015 in E.A.No.48 of 2014 in E.P.No.12 of 2009 in O.S.No.64 of 2005 on the file of Senior Civil Judge, Rayachoty.

2. Proof of service filed. The decree holder/respondent failed to attend either in person or through advocate.

3. Heard the learned counsel for the petitioners/judgment debtors and perused the material on record.

4. The suit for recovery of money was decreed on 14.08.2006. After two years of the decree, the Decree holder filed E.P. and issued Rule-22 notice to the petitioners/J.Drs and the same returned unclaimed as not in the village and by substitute service notice ordered to proceed under Order 21 Rule 54 vis-à-vis Rule 66 and Rule 64 as the case may be, for recovery of money by attachment and sale of the immovable property as part of execution that belongs to the judgment debtors. The application is filed in E.A.No.48 of

2014 in the pending E.P.No.12 of 2009 invoking order 21 Rule 106 C.P.C. particularly from the Andhra Pradesh amendment which speaks Section 5 of the Limitation Act is applicable for setting aside the exparte order in execution to condone the delay beyond the limitation period, if filed for sufficient cause being shown. The only reason assigned in filing the application is as if on the day before filing of the application suddenly, the judgment debtors came to know. If not all at least from their own say some of them are residents of Rayachoty and the execution Court is at Rayachoty and the decree is of the year 2006 and the suit is of the year 2005 and E.P. is pending since 2009. Thus, it is unbelievable of as if they came to know only a day before filing of the application without even disclosing how they all came to know all of a sudden even earlier notices were returned as not in the village, apart from substituted service by paper publication ordered and complied with after several times notices taken could not be served personally from satisfaction of the Court that they were evading. There is no other reason assigned to say there is lack of sufficient cause even the approach to be adopted is pragmatic.

5. Having regard to the above, from perusal of the record that too when the only ground urged of alleged discharge of the decree amount thereby unexecutable,

which is bereft of required material particulars as to when paid, how paid, by invoking Rules 1 and 2 C.P.C. or any application on original side before filing of E.P. to record the part satisfaction, if it is outside the Court if not paid or deposited in Court to record that could invariably reflect in the grounds for plea of discharge.

6. Having regard to the above, there are no grounds for this Court while sitting in revision to interfere with the impugned order of the lower Court supported by reasons to the conclusion in dismissing the delay condonation application.

7. However, while disposing of the application, it is made clear that if really there is a genuine defence to execution proceedings, the doors are not closed to the judgment debtors, as they can raise any tenable objections at the under Rule 64 stage also apart from any application to be filed invoking Section 47 of C.P.C. subject to filing of proof with authenticity as to any payment regarding any discharge made. The objections relating to the steps not properly taken under Order 21 Rule 66 C.P.C. is left open to raise before the trial Court to consider. Thereby, the revision is disposed of by directing the Executing Court to permit the judgment debtors to participate in the execution proceedings from the stage covered by Rule 66 or 64 to impugn any

procedure not properly followed from Rule 66 stage onwards.

8. With the above directions and observations, this Civil Revision Petition is disposed of. There is no order as to costs.

9. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-04-2016

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