

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1918 OF 2012

ORDER:

This civil revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed by the respondent/ judgment debtor in E.P. No.162 of 2011 in O.S. No.442 of 2005 on the file of Principal Junior Civil Judge, Guduru, challenging the order dated 26.03.2012 passed in the execution petition.

The respondent herein obtained decree in O.S. No.442 of 2005; for realisation of decree amount, he filed execution petition in E.P. No.162 of 2011 for attachment and sale of movable property i.e. car bearing No.AP 26 AA 8244 purchased by the petitioner herein obtaining loan bearing No.101363000700 from Andhra Bank Dargamitta Branch, Nellore, on 22.03.2008 by hypothecating the same with the Bank.

The only contention raised before the executing court is that the property was already hypothecated to the Bank and the petitioner has to pay the loan amount due to the Bank and therefore the property cannot be brought to sale. But the executing court observed that the Bank also filed O.S. No.214 of 2011 and the same is pending for adjudication, concluded that the petitioner failed to produce any oral or documentary evidence in support of the said contention and even did not enter into witness box in support of his contention, in the absence of either oral or documentary evidence, the court could not accept such contention and declined to pass any order in favour of the petitioner herein and ordered attachment in execution petition for sale of item 2 of

- 2 -

schedule property i.e. car. The said order is now challenged before this court on the same ground, however, even if the property is mortgaged, and if any charge is created over the property, the sale of property is subject to first charge and it would not affect the rights of the petitioner in any way. If for any reason, no charge is created, the property can be sold subject to mortgage or hypothecation and the petitioners' interest will not be affected even in such case also.

Therefore, the contention of the petitioner though not supported by any evidence, still the sale would be subject to mortgage or hypothecation or first charge, if any. Therefore, I find no illegality in the order passed by the executing court in the execution petition, warranting interference of this court while exercising power under Section 115 of CPC and consequently the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs

Miscellaneous petitions, if any, pending in this civil revision petition is closed.

M.SATYANARAYANA MURTHY, J

02.06.2017
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