

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+CIVIL REVISION PETITION No.2623 of 2012

% DATED: 05.10.2017

Alapati Harichandrarao S/o Seshanna,
Hindu, 76 years,
R/o Satyanarayanapuram,
Eluru, West Godavari District.

...PETITIONER/3RD PARTY/AUCTION PURCHASER

Vs.

\$ Nalluri Somasekhar,
S/o Koteswara Rao,
Hindu, 54 years,
Cultivation,
R/o Satyanarayanapuram,
Eluru, West Godavari District & another.

...RESPONDENTS

! COUNSEL FOR THE PETITIONER: SRI VENKATESWARLU CHAKKILAM

^ COUNSEL FOR THE RESPONDENTS: NONE APPEARED

< Gist:

>Head Note

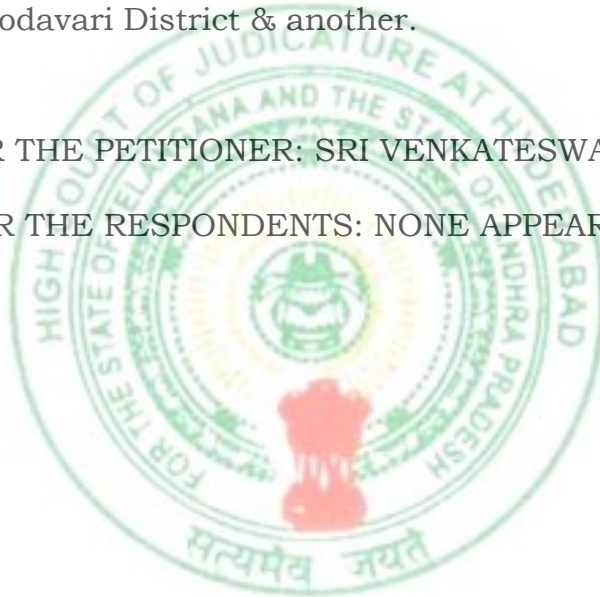
? Cases referred

1.AIR 1967 SC 608

² (2006) 2 SCC 385

³ (2008) 12 SCC 582

⁴ (2015) 5 SCC 574



THE HON'BLE JUSTICE A.V.SESHA SAI**CIVIL REVISION PETITION No.2623 OF 2012****ORDER:**

Heard the learned counsel for the petitioner. Despite service of notice, none appears for the respondents.

The auction purchaser in E.P.No.183 of 2006 in O.S.No.44 of 2005 on the file of the learned Principal Senior Civil Judge, Eluru is the petitioner in the present revision filed under Section 115 CPC. O.S.No.44 of 2005 filed by the second respondent herein against the first respondent for recovery of amount on the foot of a promissory note was decreed *ex parte* on 24.06.2006. Seeking enforcement of the said decree, the second respondent filed E.P.No.183 of 2006 by way of attachment and sale of the land, admeasuring Ac.1.50 cents in R.S.No.1014 of Dunduluru Village & Mandal, West Godavari District. Sale was held on 02.07.2007 wherein the petitioner became the highest bidder on 18.11.2008 and on the same day sale was confirmed and a sale certificate was also issued in favour of the petitioner and on 25.02.2009 and 27.02.2009 delivery of the property was also effected.

Assailing the delivery order dated 18.11.2008 in E.P.No.183 of 2006, C.R.P.No.5003 of 2009 was filed before this Court by the judgment-debtor-first respondent herein, and this Court, by way of an order, dated 24.03.2011, dismissed the said Revision. The above being the one facet of the issue and the second facet is that the judgment-debtor-first respondent herein filed I.A.No.1394 of 2007 under Section 5 of the Limitation Act, seeking condonation of delay

in filing an application under Order IX Rule 13 CPC. The said I.A. was allowed by the trial Court, condoning the delay of 418 days in filing application under Order IX Rule 13 CPC. Obviously, without participation of the auction purchaser-petitioner herein, proceedings in the said I.A.No.1394 of 2007 went on and the learned Principal Senior Civil Judge allowed the said I.A., condoning delay of 418 days in filing the petition under Order IX Rule 13 CPC. The said order is under challenge in the present Civil Revision Petition.

During the course of hearing, it is brought to the notice of this Court by the learned counsel for the petitioner that the decree-holder also filed C.R.P.No.3654 of 2011 before this Court against the same order i.e. order in I.A.No.1394 of 2007, which is impugned in the present Revision and this Court, by way of an order, dated 26.12.2011, dismissed the said Revision, confirming the order passed by the Court below in I.A.No.1394 of 2007. Apart from the above said aspect, it is submitted by the learned counsel for the petitioner that, despite the confirmation of the order passed by the Court below, condoning the delay and, thereafter setting aside the *ex parte* decree, the petitioner herein is entitled to protect his possession and right over the purchased property in view of the following judgments:

- 1) A.I.R. 1967 SC 608
- 2) 2006 (2) SCC 385
- 3) 2008 (12) SCC 582
- 4) 2015 (5) SCC 574

In this context, it may be appropriate to refer to the principles laid down in the above judgments.

In **JANAK RAJ v. GURDIAL SINGH AND ANOTHER**¹ (first cited supra), the Honourable Supreme Court held that there is no provision in the Code of Civil Procedure either under Order XXI CPC or elsewhere which provides that the sale is not to be confirmed if it be found that the decree under which the sale as ordered has been reversed before the confirmation of sale and the Honourable Apex Court further held that it does not seem ever to have been doubted that once the sale is confirmed the judgment-debtor is not entitled to get back the property even if he succeeds thereafter in having the decree against him reversed. In the said judgment, ultimately the Honourable Apex Court held in favour of the auction purchaser.

In **ASHWIN S. MEHTA AND ANOTHER v. CUSTODIAN AND OTHERS**² the Honourable Apex Court at paragraph No.70, held as under:

“ Even if such a decree is set aside, the interest of the *bona fide* purchaser in an auction-sale is saved”.

In **JANATHA TEXTILES AND OTHERS**³ the Honourable Apex Court ruled at paragraph No.18 as follows:

“ It is an established principle of law that in a third party auction-purchaser’s interest in the auctioned property continues to be protected notwithstanding that

¹ AIR 1967 SC 608

² (2006) 2 SCC 385

³ (2008) 12 SCC 582

the underlying decree is subsequently set aside or otherwise. This principle has been stated and reaffirmed in a number of judicial pronouncements by the Privy Council and this Court. Reliance has been placed on the following decisions”:

In **SADASHIV PRASAD SINGH v. HARENDAR SINGH AND OTHERS**⁴ the Honourable Apex Court held that the rights of the auction purchaser in the property purchased cannot be extinguished except in cases where the said purchase can be assailed on the grounds of fraud or collusion. Therefore, in view of the law laid down by the Honourable Apex Court in the above referred judgments, this Court finds sufficient force in the contention of the learned counsel for the petitioner that, despite the factum of the *ex parte* decree being set aside, the petitioner herein is entitled to protect his rights in respect of the subject property which he purchased in the Court auction. But in view of the earlier orders of this Court, confirming the orders passed by the Court below in the Revision filed by the decree-holder, this Civil Revision Petition is liable to be dismissed.

With the observations indicated supra, the Civil Revision Petition is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

A.V.SESHA SAI, J

05th October, 2017
LR Copy to be marked.
Tsy

⁴ (2015) 5 SCC 574