

HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3943 of 2015

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 ('the Code') by the petitioner/judgment debtor is directed against the orders, dated 17.07.2015, of the learned I Additional District Judge, Ongole, passed in E.P.No.34 of 2014 in I.A.No.445 of 2013 in O.S.No.13 of 2010.

2. I have heard the submissions of *Sri S Venkateswarlu Sanisetty*, learned counsel appearing for the petitioner/judgment debtor, ('JDr' for short), and of *Sri M.Sudhir Kumar*, learned counsel appearing for the respondent/decree holder, ('Dhr', for short). I have perused the material record.

3. The facts, which are required to be stated as a preface to this order, in brief, are as follows:

The Dhr obtained a preliminary decree against the JDr on the foot of a mortgage. Aggrieved thereof, the JDr preferred a first appeal. However, stay orders are granted in the said appeal, subject to certain conditions. The stay orders are not in force as the JDr failed to comply with the conditions imposed in the conditional stay orders. The Dhr filed an application for passing a final decree in terms of the preliminary decree. The said application in I.A.No.445 of 2013 was duly allowed and a final decree was duly passed. The final decree is not challenged by the JDr and it has become final though the appeal against the preliminary decree is stated to be pending. After passing of the final decree, the Dhr filed the afore-stated execution petition for realization

of the decree debt. In the EP, the only contention raised by the JDr is that the appeal against the decree and judgment in O.S.No.13 of 2010 is pending and that the executing Court may not proceed with the execution petition in view of the pendency of the appeal, and that if the properties mentioned in the execution petition schedule are brought to sale, even before the appeal is disposed of, he would be put to irreparable loss, in the event of his success in the appeal suit. However, as there are no stay orders in the appeal suit, the executing Court overruled the objections in the counter of the JDr and is proceeding further in the execution petition.

4. The aggrieved JDr having preferred this revision contends that the first appeal filed against the preliminary decree is pending and therefore, the property may not be brought to sale in the interests of justice.

5. Per contra, learned counsel for the DHr would submit that the JDr has not paid the decree debt despite granting conditional stay orders in the appeal suit-A.S.No.1041 of 2012, and that due to non-compliance of the conditions imposed in the conditional stay orders, the stay orders are not in force and that the time for redemption has elapsed and the right of the JDr to redeem the property is foreclosed and that, therefore, the DHr is entitled to bring the property to sale and realize the decree debt and that that the revision is devoid of merit and that the executing Court is justified in proceeding further with the execution proceedings.

6. I have given earnest consideration to the facts and submissions.

7. Having regard to the facts and submissions, which are undisputed, this Court is of the considered view that the contentions of the JDr are

untenable in the light of the fact that there are no stay orders in force in the appeal suit and that therefore, the order passed by the executing Court, which is impugned, is justified and warrants no interference. However, at the hearing, learned counsel for the JDr made an alternative submission that to protect the property from being sold, the JDr is prepared to pay the entire decree debt without prejudice to his rights and contentions in the first appeal, and therefore, in the event of dismissal of the revision, time may be granted to deposit the entire decree debt in the interests of justice.

8. Learned counsel for the DHr while endorsing the said submission, stated that a reasonable time may be granted to the JDr by protecting the interests of DHr as well.

9. On the above analysis, and for the reasons stated supra, this Court finds that the revision petition is liable to be dismissed, confirming the orders of the executing Court.

10. Accordingly, the Civil Revision Petition is dismissed confirming the order impugned. However, the JDr is granted two months time for paying the entire decree debt as indicated infra. He shall pay 50% of the entire decree debt within one month from the date of receipt of a copy of this order or deposit the same to the credit of the E.P.No.34 of 2014 in I.A.No.445 of 2013 in O.S.No.13 of 2010 on the file of the I Additional District Court, Ongole; and he shall pay or deposit similarly the remaining 50% of the decree debt within a month thereafter. Failing to make any of the deposits as indicated supra, the executing Court shall be at liberty to proceed with the further steps in the execution petition in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, in this revision petition shall stand closed.

12th September, 2017
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M. SEETHARAMA MURTI, J

