

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.44 of 2017

ORDER

This Civil Revision Petition is directed against the order dated 13.12.2016 passed in E.A.No.169 of 2016 in E.P.No.78 of 2015 in O.S.No.274 of 2014 by the I Additional District Judge, Ongole.

In spite of service of notice on the respondent, none appeared and no representation is made on his behalf.

Heard learned counsel appearing for the petitioner.

The petitioner is the decree holder. Pursuant to the decree in O.S.No.274 of 2014, he filed EP No.78 of 2015, for realization of the decretal amount. On 11.07.2016, the Court below brought the property for sale by fixing the upset price at Rs.20,00,000/-. Since the upset price was on higher side, the bidders did not come forward for the bid. The petitioner states that basic value of the suit schedule property is Rs.3,65,700/-, whereas the value fixed by Ameen is at Rs.8,00,000/- and that contrary to the said documentary evidence, when the upset price was fixed at Rs.20,00,000/- by the Court below, he filed E.A.No.169 of 2016 under Order 21 Rule 66 of the Civil Procedure Code, for fixation of proper upset price. The said application was partly allowed by the Court below on 13.12.2016 and upset price was fixed at Rs.18,00,000/-. When the petitioner approached this Court on an earlier occasion by filing C.R.P.No.3855 of 2016, this Court

disposed of the same on 11.11.2016 directing the Court below to consider the application filed by the petitioner and pass appropriate orders in accordance with law. However, aggrieved by the fixation of upset price, the present application was filed by the petitioner.

Learned counsel appearing for the petitioner submits that the judgment debtor did not raise any objection, but the Court below has been raising objections *suo motu* by fixing the higher upset price and disabling the bidders from participating in the auction.

Perused the record. The judgment debtor remained *ex parte* and no counter was filed. The Court below should have taken into consideration the documentary evidence placed before it for fixing the upset price. But, without considering the same, it fixed the upset price at Rs.20,00,000/- and thereafter, reduced it to Rs.18,00,000/-. This whimsical fixation of upset price disables the petitioner from putting the property to sale.

In the circumstances, the order passed by the Court below is modified and the upset price is fixed at Rs.10,00,000/- (Rupees ten lakhs only) and the Court below is directed to take further steps on the basis of the said fixation in accordance with law.

The Civil Revision petition is disposed of accordingly.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

3rd February, 2017
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