

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP.Nos.100 and 105 of 2017

COMMON ORDER:

Since these two Revisions arise out of the same suit, they are being disposed of by this common order.

2. The petitioner herein is judgment-debtor in O.S.No.15 of 2010 on the file of Senior Civil Judge, Tadepalligudem.

3. The said suit was filed on the basis of an equitable mortgage for recovery of sum of Rs.8,53,650/- by respondents against the petitioner.

4. A preliminary decree was passed on 22.03.2012 in the suit. Final decree was passed on 12.04.2013.

5. On 25.04.2014, E.P.No.31 of 2014 was filed for recovery of a sum of Rs.9,35,869/- by way of sale of E.P. Schedule property, belonging to petitioner.

6. Summons were issued for service on petitioner, and on the basis that such summons were returned unserved, substituted service was ordered by the Court below in a newspaper by name 'Gopi Krishna' newspaper having local circulation. It was accordingly published on 08.10.2015, and since petitioner was absent he was set *ex parte* and sale of the E.P. Schedule property was ordered on 22.08.2016. On

that day, one Toleti Srinivasa Rao of Juvvalapalem quoted a sum of Rs.30,00,000/- as the bid amount.

7. On 22.08.2016, the petitioner filed E.A.No.291 of 2016 to set aside the order dt.08.10.2015 setting him *ex parte* on the ground that he was not given adequate opportunity to defend himself, that he did not receive any summons and paper publication was made when he was away on travel to other places to secure employment in agriculture.

8. Counter-affidavit was filed by 5th respondent opposing this application and taking a plea that petitioner was fully aware of the E.P. proceedings.

9. By order dt.02.12.2016, the Court below allowed the said E.A. but directed the petitioner to deposit 50% of the decretal amount on or before 09.12.2016.

10. E.A.No.410 of 2016 was filed by petitioner to extend the time for at least 30 days to comply with the order passed by the Court below on 28.12.2016.

11. By a Docket Order passed on 28.12.2016, E.A.No.410 of 2016 was also dismissed on the ground that the earlier order was not complied with and this showed that petitioner did not act in a *bona fide* manner.

12. The order dt.02.12.2016 in E.A.No.291 of 2016 is challenged in CRP.No.100 of 2017; and the order dt.28.12.2016 in E.A.No.410 of 2016 in E.A.No.291 of 2016 is questioned in CRP.No.105 of 2017.

13. Heard the counsel for petitioner, and Sri N. Srihari for respondent nos.3 to 5.

14. The counsel for petitioner contended that the original order dt.02.12.2016 in E.A.No.291 of 2016 itself is onerous, and that to recall the order setting aside the petitioner *ex parte* on 08.10.2015 such an onerous condition cannot be imposed directing the petitioner to deposit half of the decretal amount. He further contended that summons in the E.P. had not been served on him, that the paper publication was directed in an obscure newspaper without much circulation and the respondents cannot be allowed to take advantage and prevent the petitioner from contesting the E.P. He further contended that the request to extend the time by 30 days was a reasonable request in the facts and circumstances of the case, since demonetization was introduced by the Central Government and there was difficulty in raising money to comply with the Court order.

15. Though the counsel for respondent nos.3 to 5 sought to refute the above contentions, it cannot be disputed that there was demonetization introduced from 08.11.2016 by the Union Government and procuring half of the decretal amount in such a short time as was fixed by the Court below was impossible. That apart, the

very order directing the petitioner to deposit half of the decretal amount as a pre-condition for setting aside the order setting him *ex parte* on 08.10.2015 is onerous. Though substituted service was ordered in a newspaper called *Gopi Krishna*, the said newspaper itself would have very limited circulation and such publication cannot be a ground to deny the petitioner an opportunity to contest the E.P.

16. Therefore, the order dt.02.12.2016 in E.A.No.291 of 2016 in E.P.No.31 of 2014 in O.S.No.15 of 2010 is modified, and subject to the petitioner depositing a sum of Rs.5000/- to the credit of the E.P. within a period of four (04) weeks from today, the order dt.08.10.2015 setting the petitioner *ex parte* shall stand set aside, and the proceedings in the E.P. shall be commenced from that stage after giving opportunity to petitioner to file a counter-affidavit which shall be filed within four (04) weeks from today without fail.

17. If the petitioner does not file a counter-affidavit and deposit the amount of Rs.5,000/- as fixed herein, the Civil Revision Petition No.100 of 2017 shall stand dismissed.

18. The amount of Rs.5,000/- as and when deposited by petitioner shall be withdrawn by respondents without furnishing any security.

19. Accordingly, Civil Revision Petition Nos.100 and 105 of 2017 are allowed subject to the above conditions. No order as to costs.

20. Miscellaneous petitions, pending if any in these Revisions, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 27-01-2017
Ndr/*

