

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 5589 of 2016

Order:

The petitioners herein are the decree holders. They filed E.P.No.81 of 2015 on the file of the I Additional District Judge, Ongole for an amount of Rs.6,49,103/- on 16.11.2015 by calculating the interest on principal amount up to that date. The said EP was filed pursuant to a decree dated 14.11.2006 passed in M.V.O.P.No.226 of 2004 by the I Additional District Judge, Ongole and as modified by this Court in M.A.C.M.A.No.291 of 2007 dated 15.01.2014. It appears that the judgment debtors deposited an amount of Rs.6,06,611/- in the Court on 05.01.2016. The petitioners/de decree holders filed a memo on 21.06.2016 stating that immediately on deposit of the amount a calculation memo was filed by them and the Court granted time to the judgment debtors till 11.03.2016 for filing counter. The judgment debtors did not file counter and they were set *ex parte* by the Court on 11.03.2016. The executing Court ordered attachment of the amount of the judgment debtors from garnishee for Rs.42,492/- only. It is stated that the petitioners/de decree holders are entitled to subsequent interest after filing the E.P in view of their entitlement and also in view of the ratio laid down by this Court in Kuppam Satyanarayana v. Beduru Siva Reddy¹. When the petitioners/de decree holders filed E.A.C.F.R.No.4574 of 2016 on 05.07.2016, the said application was returned by giving liberty to the petitioners/de decree holders to file fresh petition. Challenging the said order dated 11.07.2016 the present Civil Revision Petition is filed.

¹ 2009 (5) ALD 174

The only point that arises for consideration is whether the petitioners/deed holders have to file a separate execution petition in respect of the amount accrued towards interest subsequent to filing of execution petition or whether they can realise the said amount in the said E.P itself.

The said point is no longer *res integra*, as this Court in Kuppam Satyanarayana's case (supra) already decided the said point. When the same was brought to the notice of the trial Court, the trial Court should have considered the said decision and passed orders, but the application filed by the petitioners/deed holders for recovery of the subsequent interest was returned, even without numbering, asking the petitioners to file fresh EP.

In the circumstances, E.P.No.81 of 2015 which was closed on 11.07.2016 is restored to file and the trial Court is directed to number the application filed by the petitioners/deed holders in E.A.C.F.R.No.4574 of 2016 on re-presentation and pass appropriate orders in accordance with law. Consequently, the order dated 11.07.2016 passed in the unnumbered E.A., i.e., E.A.C.F.R.No.4574 of 2016 is set aside. The petitioners/deed holders are given one week time for re-presenting the application before the trial Court after receipt of a copy of this order.

The Civil Revision Petition is, accordingly, allowed at the admission stage, as none appeared for the respondents/judgment debtors even after service of notice. There shall be no order as to costs. The miscellaneous petitions, if any, shall stand closed.

The office is directed to return E.A.C.F.R.No.4574 of 2016 to the counsel for the petitioners/deed holders for presentation before the trial Court.

A. RAMALINGESWARA RAO, J

Date: 04.01.2017
Nsr

