

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.4524 of 2017

ORDER:

Aggrieved by the dismissal of his application under Section 47 of the Code of Civil Procedure, the judgment-debtor has come up with the above revision.

2. Heard Mr. Venkateswarlu Chakkilam, learned counsel for the petitioner and Mr. V.V.L.N. Sarma, learned counsel for the respondents.

3. The respondents obtained a money decree as against the petitioner, in O.S.No.57 of 2012. In execution of the decree, the property was brought to sale. After the property was brought to sale, the petitioner initiated proceedings under Order XXI Rules 89 and 90 of CPC in E.A.No.217 of 2014, but the same was dismissed for non-prosecution. Then he filed a restoration application, but it was returned and there was a delay in representation. The trial Court refused to condone the delay in representation forcing the petitioner to come up with a revision. The revision was dismissed.

4. Subsequently, the petitioner filed an application under Section 47 of CPC. Without even numbering the same, the Executing Court dismissed it on the ground that the petition previously filed under Order XXI Rules 89 and 90 of CPC in E.A.No.217 of 2014 was dismissed. It is against this order that the petitioner is before me.

5. Referring to the past conduct of the petitioner, which includes the sale of one portion of an attached property to third party

and the proceedings initiated by the said third party by way of claim petition, it is contended by Mr. V.V.L.N. Sarma, learned counsel for the respondents that the petitioner does not deserve any sympathy, as he has exhibited various tactics. Therefore, the learned counsel contended that no interference is called for under the revisional jurisdiction of this Court.

6. I have carefully considered the above submission.

7. According to the learned counsel for the petitioner, the property sought to be attached is worth Rs.40.00 lakhs and that for a decree of money to the tune of nearly Rs.1.00 lakh and odd, the property was sought for a sum of little over Rs.6.00 lakhs. The decree holder himself participated in the auction, after seeking permission of the Court and secured the property.

8. However, the above facts are disputed by the learned counsel for the respondents. But in any case the only question that falls for consideration is as to whether the petitioner deserves an enquiry in the application under Section 47 of CPC or not.

9. The only ground on which the Executing Court dismissed the application under Section 47 CPC, without even numbering the same is that a previous application had been dismissed. But the previous application was under Order XXI Rules 89 and 90 CPC, which require the deposit of money together with interests and costs, which the petitioner appears to have failed to do. But the claim petition under Section 47, out of which the present revision arises, is on the ground that the mandate of law under Order XXI Rule 64 CPC was not followed. Therefore, the dismissal of the previous

application cannot be a bar, for looking into the grievance of the petitioner in the application under Section 47 CPC.

10. Eventually, the Court may be entitled, on the merits of the case, to decide the application under Section 47 CPC one way or the other. But this is not to say that the application can be rejected without any enquiry.

11. Since the Court has chosen not even to number the application and enquire into the same, the order of the Court below deserves to be set aside.

12. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. The Executing Court is directed to number the application under Section 47 CPC, conduct an enquiry and dispose of the same in accordance with law, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 22-12-2017

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