

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CIVIL REVISION PETITION No.5705 of 2017**

**ORDER:**

Heard learned counsel for petitioner and this Court is of the considered view that the Revision can be disposed of at the admission stage without the expediency of ordering notice on respondent in view of the facts involved in the case.

2. The Civil Revision Petition is filed by the judgment debtor aggrieved by the order dated 13.9.2017 in E.A.No. 475 of 2017 in E.A.No. 1355 of 2016 in E.P.No.163 of 2008 in O.S.No. 50 of 2003 on the file of Principal Senior Civil Judge, Kadapa, whereunder, the executing Court has dismissed the E.A.No. 475 of 2017 filed to restore E.A. No. 1355 of 2016 (wrongly mentioned in the impugned order as E.A.No. 1335/2016).

3. The respondent/plaintiff obtained money decree against the petitioner/defendant and filed EP No. 163 of 2008 for realization of about Rs. 4,71,311/- by way of auctioning the petitioner's house property. It appears, in the said EP, the judgment debtor remained ex-parte and hence he filed E.A.No. 1355/2016 to set aside the ex-parte order. By order dated 7.7.2017, the executing Court allowed the said petition on payment of costs of Rs. 1,000/- to respondent by 13.7.2017 with a direction to file counter by the said date and with a further direction that on failure of the petitioner to comply with the aforesaid order, the petition shall stand dismissed. Since the petitioner did not comply with the aforesaid order, the petition was dismissed and EP was

proceeded with. At that stage, the petitioner filed EA No. 475 of 2017, seeking to set aside the dismissal order and restore EA No. 1355 of 2016. The executing Court dismissed the said petition with the observation that the said order was a conditional order which was not complied with by the petitioner and therefore, the same cannot be restored. Hence, the present Civil Revision Petition.

4. Learned counsel for petitioner would submit that unfortunately on the due date when the order was to be complied with, the counsel for petitioner due to unavoidable circumstances was not present in the Court and therefore, the order could not be complied with and there were no willful laches on the part of the petitioner and in order to show his bonafides, he is ready to deposit a reasonable part of the EP amount and his valuable rights in the subject property are at stake and hence, one more opportunity may be given to him.

5. It is true that the order in EA No. 1355 of 2016 was a conditional order. However, considering the submission of the learned counsel for the petitioner that the petitioner/judgment debtor is ready to deposit a reasonable portion of the EP amount to show his bonafides and also that his valuable rights in the EP schedule property are at stake, this Court is of the considered view that an opportunity shall be given to him to participate in the execution proceedings.

6. Accordingly, this Civil Revision Petition is allowed by setting aside the order dated 13.09.2017 in E.A.No.475 of 2017. Consequently, the order in E.A.No.1355 of 2016 is restored and the petitioner is directed to comply the

said order by 13.11.2017 by depositing Rs.1000/- (Rupees one thousand) and filing the counter. The petitioner is further directed to deposit one half of the E.P amount within eight (8) weeks from the date of this order. On petitioner's failure to comply with the aforesaid directions, this order shall stand dismissed.

No costs.

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U.DURGA PRASAD RAO, J

Date: 23.10.2017

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Note: Office is directed to send a copy of the order to the Principle Senior Civil Judge, Kadapa immediately.

