

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.5953 of 2017

ORDER ::

This civil revision petition is filed against the order dated 30-08-2017 passed in EP No.31 of 2014 in OS No.15 of 2010 on the file of Senior Civil Judge at Tadepalligudem, in terminating the EP without conducting fresh enquiry, as directed by this Court in CRP Nos.100 & 105 of 2017. The petitioner in effect seeks to reopen the said EP.

2. The facts stated are:- Suit OS No.15 of 2010 was filed for recovery of mortgaged debt. The petitioner herein is judgement debtor and the respondents are decree holders. The suit was contested and a preliminary decree was passed on 22-03-2012. Thereafter, the respondents-decree holders filed an application IA No.1473 of 2012 seeking to pass final decree and accordingly a final decree was passed on 12-04-2013. The respondents-decree holders filed EP No.31 of 2014 for execution of the decree. It is borne out from the record that when summons were sought to be served on the petitioner, the same returned un-served and under those circumstances, at the request of the decree-holders, substituted service was ordered by the Court and the same was published in a local newspaper and even thereafter, the petitioner-judgement debtor did not turn up and contest the matter, he was set ex-parte and the sale of the EP schedule property was ordered on 22-08-2017 and the property was ultimately sold in public auction. While the matter was coming for confirmation of the sale, the petitioner filed EA No.291 of 2016 to set aside the order setting him ex-parte

on the ground that he was not given adequate opportunity to defend himself as he did not receive any summons and also he did not notice the paper publication as he was away to other places to secure employment. By order dated 02-12-2016, the Court below allowed the said EA No.291 of 2016 on condition the petitioner deposits 50% of the decretal amount within one week from the date of the order. The petitioner filed EA No.410 of 2016 to extend one month time to comply with order dated 02-12-2016. By order dated 28-12-2016, EA No.410 of 2016 was dismissed. Under those circumstances, the petitioner herein filed two revision petitions being CRPs No.100 & 105 of 2017. This Court while allowing the revision petitions set aside the ex-parte order and directed the Court below to give opportunity to the petitioner to file counter affidavit and also modified the condition imposed by the Court below to deposit 50% of the decretal amount to that of depositing a sum of Rs.5,000/- to the credit of the EP and the decree holders-respondents herein were permitted to withdraw the same without furnishing any security.

3. Thereafter, as is evident from the counter affidavit filed by the respondents-decree holders, the Court below posted the matter for hearing the EP on 08-03- 2017 on which date counter affidavit was filed by the petitioner along with EA No.291 of 2016 was received. Thereafter the matter underwent several adjournments. It is also borne out from the record that the claim petition being EA No.294 of 2016 filed by son of the petitioner was also dismissed and thereafter the sale was confirmed and sale deed also executed in

favour of the auction purchaser by the Court below and delivery warrant was issued. As matters stood thus, the present revision petition filed.

4. Learned counsel for the petitioner-judgement debtor strenuously contended that the Court below did not afford opportunity to the petitioner as earlier directed by this Court in CRP Nos.100 and 105 of 2017, therefore the entire sale proceedings have to be set aside and a fresh auction is to be conducted. It is further contended by learned counsel that once the order setting him ex-parte is set aside by this Court, the petitioner ought to have been given opportunity to conduct the proceedings from that stage. In support of his contention, judgement of this Court in **LAKSHMI MANOHAR SARASWATHI vs. KANTIPUDI RAMAKRISHNA** (1982 (1) AndhWR 242) is relied on.

5. Learned counsel for the respondents-decree holders, on the other hand, contended that the petitioner was given ample opportunity by the Court below and drawn attention to the various dates on which the matter was posted to give opportunity to the petitioner. It is also stated that the petitioner got a claim petition filed through his son which was dismissed by the Court below and thereafter the sale was confirmed and sale certificate issued in favour of the respondents. It is also contended that the petitioner is adopting delay tactics to see the respondents-decree holders do not enjoy the fruits of the decree even after the matter has attained finality.

6. It is to be seen that after orders are passed in CRP Nos.100 & 105 of 2017, the matter was posted on various dates, the details thereof are mentioned in the counter affidavit filed by the respondents in this revision and on one of the adjournment was granted by imposing costs on the petitioner and the petitioner paid the same. It is also borne out from the record that the petitioner's son also filed a claim petition in relation to the same subject matter, the same was dismissed. Without participating himself in the proceedings, the petitioner now after the sale is confirmed and sale certificate is issued, cannot be permitted to contend that no opportunity was given. From the sequence of facts, the petitioner tried to avoid the process of law to take effect. There is no dispute with the proposition laid in the decision cited by the learned counsel for the petitioner that when an order is set aside, the consequential order even if it is a decree cannot survive. But in this case the facts are distinguishable. Ex-parte order was set aside by this Court and thereafter the petitioner contested the matter. In the affidavit filed in support of stay petition in the CRP, it is stated that no opportunity was given to defend the EP, but in fact as per the orders dated 07-04-2017 in EP No.31 of 2014, opportunity was given to the petitioner and Court below after giving opportunity, allowed the EP by order dated 07-04-2017 which is not challenged in the revision, but petitioner challenged the order dated 30-08-2017 contending that he was not given opportunity of hearing in pursuance to orders in CRP Nos.100 & 105 of 2017 filed by him.

This aspect was suppressed by petitioner in the affidavit filed in support of the stay petition.

7. In ***KD SHARMA vs. STEEL AUTHORITY OF INDIA LIMITED*** (2008) 12 SCC 481, the Supreme Court dealing with an issue of suppression of true facts by the party, at para 36 observed that “...If the applicant makes a false statement or suppresses any material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, *“we will not listen to your application because of what you have done.”* The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. As per settled law, the party is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts”.

8. In this case also the true facts of the case are suppressed. As such CRP is liable to be dismissed for suppression of facts itself. In the circumstances, I do not find any merit in the civil revision petition and it is accordingly dismissed. Miscellaneous petitions, if any pending in this case are also dismissed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 21-12-2017
NRG

