

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.5619 of 2017

ORDER :

This Revision is filed by the petitioner assailing the docket order dt.11-09-2017 in E.A.No.193 of 2017 in E.P.No.51 of 2011 in O.S.No.221 of 2009 of the Senior Civil Judge, Narasapuram.

2. Petitioner is the judgment-debtor in the above suit.
3. The said suit was filed for recovery of money against the judgment-debtor and it was decreed on 26-10-2009. The decree was then transferred to the Court of Senior Civil Judge, Narasapuram in E.A.No.206 of 2011 dt.19-04-2011.
4. E.P.No.51 of 2011 was filed before the Senior Civil Judge, Narasapuram under Order 21 Rules 64 and 66 of C.P.C. to sell the property of the judgment-debtor to realise the decretal amount.
5. The judgment-debtor received notice in E.P. on 26-09-2011 and got filed vakalat on 13-10-2011.
6. On 21-08-2017, E.A.No.193 of 2017 was filed by the judgment-debtor alleging that the E.P. schedule property had been mortgaged to the Palakollu Co-operative Urban Bank Limited, Palakollu by deposit of title deed; that the said Bank has brought the property for sale and the sale was knocked down in favour of one Yenduru Babu Rao in E.P.No.186/2002/3 by the Dy.Registrar of Co-operative Society, Bhimavaram; that the said sale was confirmed on 03-06-2004 and sale certificate was also issued in favour of Yenduru

Babu Rao; that only thereafter there was an attachment of the property by the Senior Civil Judge Court, Bhimavaram; that the judgment-debtor came to know about the E.P. proceedings recently after receipt of the sale papers, and he had earlier no knowledge of the proceedings, and was under the impression that Yenduru Babu Rao was contesting the E.P. pending before the Court below. It is also averred that as the said Yenduru Babu Rao and his legal heirs did not prosecute the matter in a proper way, the E.P. schedule property was brought to sale. He therefore sought stay of all further proceedings until his application in I.A. (SR) No.5799 of 2017 for setting aside the ex parte decree, which is pending before the Court of Senior Civil Judge, Bhimavaram, is decided.

7. This application was opposed by the decree-holder stating that on 26-09-2011 itself, the petitioner received sale notice in the E.P. and engaged Sri R.Deva Raju as his advocate and on 13-10-2011; he also filed a counter and contested the matter; that the petitioner colluded with Yenduru Babu Rao and got filed a claim petition in E.A.No.101 of 2012; in that claim petition he had notice, but did not file any counter; that the claim petition was dismissed due to the death of Yenduru Babu Rao; later the legal representatives of Yenduru Babu Rao filed E.A.No.108 of 2016 under Section 5 of the Limitation Act and E.A.No.107 of 2016 to bring his legal representatives on record in the claim petition; petitioner received notice in both these applications also; that these applications were dismissed on 06-04-2017; and no document has been field by the petitioner to show that he had filed an

application to set aside the *exparte* decree in Bhimavaram Court and so E.A.No.193 of 2017 be dismissed.

8. The Court below dismissed E.A.No.193 of 2017 on 11-09-2017. It held that petitioner had notice of the filing of the E.P. even by 26-09-2011 and cannot claim to be ignorant of the E.P. proceedings. It also held that petitioner had notice of the claim petition and its dismissal as well as knowledge about the dismissal of E.A.Nos.108 and 107 of 2017 filed by the legal heirs of the claim petitioner. It further held that there is no documentary evidence to prove that any application to set aside the *exparte* decree is pending in the Bhimavaram Court and that even if the petitioner's contentions are taken into account, he filed such an application only in August, 2017 though he had knowledge about the *exparte* decree even by 2011. It therefore held that petitioner had **taken** false pleas and is trying to stall the E.P. proceeding which are of the year 2011, and that E.A.No.193 of 2017 is filed after the E.P. was filed for sale and there are no *bona fides* in this application.

9. Challenging the same, this Revision is filed.

10. Ms.I.Mammu Vani, learned counsel for petitioner seeks to contend that the petitioner was under the impression that Yenduru Babu Rao, who purchased the property in the sale conducted at the instance of Palakollu Co-operative Urban Bank Limited, was contesting the E.P. and that the rights of said Babu Rao would be affected if the property is put to sale. In my opinion, it is for the said

Babu Rao, who tried to stall the sale, and not for the petitioner to plead the case of Babu Rao. In any event, it is on record that Yenduru Babu Rao actually filed claim petition in E.A.No.101 of 2012, which came to be dismissed and attempts by his legal heirs to seek restoration of the same have failed on 06-04-217.

11. In this view of the matter, there is no impediment to the sale of the E.P. schedule property at all since the claim petition was dismissed.

12. The plea of the petitioner that he had no knowledge about the E.P. proceedings is also found by the Court below to be false after verification of the record before it. Therefore I am of the opinion that the Court below did not commit any error of jurisdiction in dismissing E.A.No.193 of 2017.

13. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No costs.

14. Miscellaneous applications pending if any in this Revision shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 24-10-2017

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