

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION Nos. 7003 & 6973 of 2017

COMMON ORDER:

C.R.P. No. 7003 of 2017 is filed by the petitioner/JDR aggrieved by the order dated 28.11.2017 in E.A.No. 21 of 2017 in E.P.No. 56 of 2011, whereunder the Execution Court -cum- First Additional District Judge, Mahabubnagar dismissed the petition filed by him under Order 21 Rule 106 CPC to set aside the ex-parte order dated 15.2.2017, whereas C.R.P.No. 6973 of 2017 is filed by him to set aside the order dated 28.11.2017 in E.A.No. 20 of 2017 in E.P.No. 56/2011, whereunder the petition filed by him under Section 5 of Limitation Act was dismissed by the Execution Court.

2. The respondents are the decree holders. Respondents/DHRs obtained money decree against JDR and put it in execution by way of sale of property of the petitioner/JDR. In E.P., the JDR remained *ex-parte* and an *ex-parte* order dated 15.2.2017 was passed. Hence, he filed E.A.No. 21 of 2017 to set aside the ex-parte order. He also filed E.A.No. 20 of 2017 under Section 5 of Limitation Act, to condone the delay of 136 days in filing the petition to set aside the *ex-parte* order. Both petitioners were dismissed. In the meanwhile, the sale of the EP schedule property took

place on 15.6.2017 and it is informed by both the parties that now the matter is coming up for confirmation of sale.

3. When the matter came up for hearing, learned counsel for petitioner/JDR would submit that an opportunity may be given to the petitioner/JDR to contest the EP inasmuch as his agricultural land was sold in execution for far a lesser price, thereby causing much prejudice to him.

4. Learned counsel for respondents/DHRs objected for allowing the CRPs on the ground that the JDR having fully known about the different stages of the EP, purposefully remained absent as he had no case and further, the property was sold for a valid and reasonable price and the DHRs participated in the sale and purchased the property having obtained permission from the Execution Court and therefore, there is no tenable contest for the petitioner/JDR in the EP. He thus prayed to dismiss the CRP.

a. However, when the matter came up for further hearing, both the counsel agreed to allow the Civil Revision Petitions on the condition that the petitioner/JDR shall deposit the EP amount.

b. Accordingly, the learned counsel for respondents/DHRs, today filed a calculation memo showing the EP amount as well as the

subsequent interest accrued on the EP amount till date together with costs of publication and other incidental expenditure relating to the sale, which according to him comes to Rs. 29,39,616/-. The EP amount however comes to Rs. 18,47,066/-.

c. Learned counsel for petitioner/JDR agreed to deposit the EP amount i.e., 18,47,066/- within four weeks and offer third party security for the balance amount of Rs. 10,92,550/-.

5. In view of the above understanding between the parties, the following order is passed:

(1) CRP No. 6973/2017 and CRP No. 7003/2017 are allowed by setting aside the orders under E.A.No. 21/2017 and E.A. No. 20/2017. Consequently, those petitions are allowed and ex-parte order dated 15.2.2017 is set aside permitting the JDR to contest the EP. However, the attachment of the EP schedule property shall continue till the disposal of the EP.

(2) The petitioner/JDR is directed to deposit the EP amount of Rs. 18,47,066/- and offer third party property security for a sum of Rs. 10,92,550/- to the satisfaction of the Execution Court, within four (4) weeks from the date of

this order failing which this order shall be deemed cancelled.

- (3) In the event of petitioner/JDR depositing the EP amount, the respondents/DHRs will be entitled to withdraw the same.

6. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

Date: 20.12.2017
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U.DURGA PRASAD RAO, J

