

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6381 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C., aggrieved by the order dated 17.08.2016, passed in E.P.No.56 of 2011 in O.S.No.122 of 2007 on the file of the Additional Senior Civil Judge, Tirupati, wherein the Court below directed the judgment debtors to vacate the EP schedule property and deliver the same to the decree holder within three months from the date of this order, failing which the decree holder can take delivery of the vacant possession with the police aid. It is further directed that if the judgment debtors failed to comply with the order, the decree holder can file a separate application for delivery of possession of the vacant site.

2) The facts in issue are as under:

Respondent Nos.1 and 2 herein, filed O.S.No.122 of 2017 seeking delivery of vacant possession of the plaint 'B' schedule property, which was decreed on 19.11.2009. In spite of repeated demands made by the decree holder, the judgment debtors failed to deliver possession of the schedule property, as such, they filed the present E.P.

3) Counters came to be filed in the E.P. denying the title of the decree holder. It is also stated in the counters that the judgment debtors filed a petition to set aside the decree, as the decree holder obtained ex parte decree.

4) After considering the rival submissions, the trial Court passed the impugned order. Challenging the same the present Civil Revision Petition is filed.

5) Learned counsel for the petitioners would submit that the decree holder obtained an ex parte decree and when a petition to set-aside the ex parte decree is pending, the trial Court ought not to have passed any order in the E.P.

6) The same is strongly opposed by the learned counsel for the respondents stating that the application filed by the petitioners to condone the delay in filing the petition to set aside the ex parte decree was dismissed on 04.08.2016. Aggrieved by the same, they also preferred a civil revision petition, which was also dismissed on 02.11.2016. Hence, submits that there is nothing wrong or illegal in passing orders in the E.P.

7) It is not in dispute that the decree holders obtained an ex parte decree. The petitioners filed an application to set-aside the said ex parte decree along with a petition to condone the delay of 536 days in filing the

petition. The delay application filed by the petitioners was dismissed on 04.08.2016. Aggrieved by the same, the petitioners filed C.R.P.No.4164 of 2016, which was also dismissed on 02.11.2016. Admittedly the decree is passed against the judgment debtors, which is binding on them unless it is set aside. Since the application filed by the petitioners to condone the delay in filing an application to set aside the exparte decree was dismissed and also the civil revision petition filed by them aggrieved by the orders in the said delay application also dismissed, I see no reasons to interfere with the order passed by the Court below.

8) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

9) Consequently, the Miscellaneous Petitions, if any, pending shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

22.06.2018

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