

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.674 of 2018

ORDER:

This civil revision petition is filed by the Judgment Debtor, under Section 115 of CPC, assailing the order dated 03.1.2018 passed in E.A. No.195 of 2017 in E.P.No.70 of 2016 in O.S.No.184 of 2015 on the file of the Senior Civil Judge Court, Bapatla.

2. Heard the learned counsel for both the parties.

3. The point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

4. The respondent filed O.S.No.184 of 2015 against the petitioner for recovery of the suit amount. The petitioner remained *ex parte*; therefore, the trial Court decreed the suit in favour of the respondent and against the petitioner. The respondent filed E.P.No.70 of 2016 on the file of the Senior Civil Judge Court, Bapatla for realisation of the decretal amount. The executing Court issued notice to the petitioner under Rule 66 of Order XXI of CPC directing her to appear before the Court on 03.3.2017. Even after receipt of the notice, the petitioner did not choose to appear before the executing Court. Having no other alternative, the executing Court set the petitioner *ex parte*.

5. At that stage, the petitioner filed E.A.No.195 of 2017 under Section 5 of the Limitation Act to condone the delay of 209 days in filing the petition to set aside the *ex parte* order dated 10.2.2017. The respondent filed counter *inter alia* contending that Section 5 of

the Limitation Act is not applicable to Execution Proceedings. The executing Court, after affording reasonable opportunity to both the parties, dismissed the petition. Hence, the revision.

6. A perusal of the record reveals that during the pendency of E.P.No.70 of 2016, the petitioner paid an amount of Rs.3,00,000/- to the respondent. I have carefully perused the affidavit filed by the petitioner before the executing Court in E.A.No.195 of 2017. The petitioner has not assigned reasons much less cogent and valid reasons for his non-appearance before the executing Court on 10.2.2017. The petitioner also not assigned reasons for non-filing of the petition to set aside the *ex parte* order within the period of limitation. The affidavit filed by the petitioner does not disclose reasons much less cogent and convincing reasons to condone the delay. The executing Court considered the material available on record in the light of Order XXI of CPC and dismissed the petition. The executing Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the executing Court. There is no illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court under Section 115 of CPC.

7. In the result, the civil revision petition is dismissed. Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.12.2018
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