

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.1256 OF 2018

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 07.08.2017 of the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in E.A.No.19 of 2017 in E.A.No.3 of 2015 in E.P.No.2 of 2015. By the said order, the Court below dismissed the said application filed under Order 21 Rule 106 C.P.C. to set aside the order dated 01.03.2017 in E.A.No.3 of 2015 in E.P.No.2 of 2015. Aggrieved thereby, the third party-claim petitioner, the applicant in E.A.No.19 of 2017 in E.A.No.3 of 2015 in E.P.No.2 of 2015, is before this Court.

O.S.No.1446 of 2014 was filed for specific performance of an agreement of sale allegedly executed by the second respondent herein, the defendant in the suit, in favour of the first respondent herein, the plaintiff therein. The said suit was decreed by the learned Principal District Judge, Ranga Reddy District at L.B.Nagar, by judgment dated 23.06.2015. The petitioner-applicant filed a claim petition in the execution proceedings in E.P.No.2 of 2015 initiated in relation to the aforestated decree on the file of the learned XIII Additional District Judge, Ranga Reddy District at L.B.Nagar. His claim petition was taken on record as E.A.No.3 of 2015 in E.P.No.2 of 2015 in O.S.No.235 of 2009. He claimed that he was an agreement holder from the defendant in the suit and that he had parted with valuable monies towards the sale consideration. He further claimed that he was put in physical possession of the suit property. He alleged that the plaintiff and the defendant in the suit had colluded with each other and played fraud upon the Court. While so, the decree holder-

plaintiff filed an application seeking rejection of the claim petition. The same was taken up for arguments on 01.03.2017. On the said date, the petitioner-third party claimant was absent and the Court below dismissed the claim petition for non-representation. The subject E.A.No.19 of 2017 was filed by the petitioner-third party claimant to set aside the said order of dismissal of E.A.No.3 of 2015. By the order under revision, the Court below took note of the fact that there was no explanation as to why there was no representation on 01.03.2017 when the case was taken up. Observing that engagement of the counsel before another Court was not sufficient reason for total non-representation when the case was called, the Court below held against the petitioner-third party claimant. Opining that the application was filed only to drag on the matter on one pretext or the other, the Court below concluded that sufficient cause had not been made out to set aside the order dismissing the claim petition.

Heard Sri K.Jamali, learned counsel for the petitioner, and Sri I.Ramesh, learned counsel for the first respondent.

Though Sri K.Jamali, learned counsel, would submit that his client may be afforded at least one opportunity to make good his case by restoring the claim petition, Sri I.Ramesh, learned counsel, would point out that there was total negligence on the part of the petitioner in prosecuting the case, clearly demonstrating his lack of *bonafides*.

The docket proceedings in E.A.No.19 of 2017 filed for restoration of the claim petition are placed on record. It appears that the counter was filed in the said E.A. on 10.04.2017. Thereafter, the matter was called on 28.04.2017 and it was adjourned to 11.07.2017 and again to 26.07.2017. On the said day, the petitioner and respondent No.2 were called absent though respondent No.1 was present and reported ready. The matter was

adjourned finally to 02.08.2017. On that day also, the petitioner was called absent even at 1.50 p.m. and there was no representation. As notice was not given to respondent No.2, the E.A. was dismissed for default against the said respondent. As the petitioner was called absent and there was no representation, the Court below summed up that there would be no arguments on behalf of the petitioner and posted the matter for orders on 07.08.2017. On the said day, the order under revision was passed.

The aforestated facts demonstrate that the petitioner-third party claimant showed no interest in pursuing the restoration petition. A party who seeks to stall execution of a decree claiming an interest in the property which is the subject matter of the execution proceedings cannot afford to be careless. The very fact that a party who is at such grave risk demonstrates no diligence in pursuing the matter has the effect of negating the veracity of his claim. The Court below, having given sufficient time to the petitioner-third party claimant, came to this very conclusion. The order under revision therefore does not warrant interference, be it on facts or in law.

The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

8th JUNE, 2018

PGS

SANJAY KUMAR, J