

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.1652 OF 2018

ORDER:

This revision petition is filed under Section 115 C.P.C. challenging the order dated 19.01.2017 in E.P.No.5 of 2015 in O.S.No.1427 of 2002 passed by the Additional Judge-cum-VI Senior Civil Judge, City Small Causes Court, Hyderabad, whereby the Court ordered proclamation of sale of the property under Order XXI Rule 64 C.P.C.

The main contention of the petitioners/JDs before this Court is that they paid Rs.45,000/- during pendency of E.P. on 17.11.2016 and again after dismissal of E.P. for default on 10.02.2017, they paid Rs.2,50,000/- on 08.12.2016 and obtained a receipt from the Decree Holder i.e. the 2nd respondent herein. After dismissal of E.P., the respondents filed E.A.No.18 of 2017 for restoration and no notices were served on the petitioners and that the petitioners are not liable to pay the decree amount as claimed in the execution petition in view of payment of Rs.2,50,000/- after dismissal and Rs.45,000/- during pendency of E.P. and therefore, prayed to set aside the order for sale of the property by proclamation dated 23.03.2018.

The only objection raised before this Court is that the executing Court did not consider the two payments made by the petitioners i.e. Rs.45,000/- on 17.11.2016 and Rs.2,50,000/- on 08.12.2016 and that they are not owners of the property proposed to be sold in the auction by proclamation.

If the payments made during pendency and after dismissal of E.P. if certified, the Court is bound to accept the petitioners' contention and if any amount is paid outside the Court, the necessary procedure to be followed by the petitioners under Order XXI Rule 2 C.P.C. and the limitation for filing such application is within (30) days from the date of such payment and therefore, the petitioners are claiming payment under uncertified payment, which cannot be recognized by the Court as due payment unless the Decree Holder accepts that he received such amount and certified by the Court. Hence, on the ground of payment of substantial amount during pendency and after dismissal of E.P, the sale of the property cannot be stayed or order cannot be set aside.

The second ground is that the petitioners are not owners of the property proposed to be sold for realization of decree debt by following procedure under Order XXI Rule 64 and 65 C.P.C. When the petitioners are not owners, they need not worry about the sale of the property as the third person, who is the original owner may file an appropriate application under Order XXI Rule 58 C.P.C. claiming right over the property raising objection to the attachment order to set aside the sale under appropriate provision under Order XXI Rule 90, 97, 98 C.P.C. When the petitioners have no title to the property, the sale cannot be stopped and the impugned order cannot be set aside. As such the Court below did not exceed its jurisdiction that conferred on it or passed any order exercising jurisdiction which is not vested on it illegally or irregularly. Therefore, if find no ground to set aside the impugned order and the revision petition is liable to be

dismissed at the stage of admission leaving it open to the petitioners to file appropriate application before the executing Court.

Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

13.03.2018
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