

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4479 & 4705 of 2017

COMMON ORDER:

The 2 revisions are maintained impugning the orders of the learned Executing Court-cum-Principal Senior Civil Judge, Ongole, in E.A.Nos.1418 & 1419 of 2015 dated 04.01.2016.

Heard learned counsel for the revision petitioner. Despite service, the revision respondents-decree holders failed to attend.

E.P.No.261 of 2013 is filed for recovery of the amount due of LAOP.No.50 of 1984. There are 2 decree holders P. Rama Krishna and P. Rajagopal sons of Chellaiah sought for attachment and sale of the properties of the J.Dr.-LAO of Prakasam District. While so, the execution petition was ended in dismissal for default on 08.10.2010 for want of sale papers and from the absence of decree holders without representation. It is in fact execution under Order 21 Rules 43 & 66 r/w 64 CPC of the attachment of movables and for sale. There is nothing while dismissing the EP of attachment to survive. Subsequently 2 execution applications were filed to set aside the dismissal order and to restore the execution petition which are 12 years old by condoning the delay in filing application as contemplated by Order 21 Rules 105 r/w 106 CPC. Order 21 Rule 106 (2) CPC giving of notice before considering the application for restoration or setting exparte as the case may be with delay condonation as the case may be. A perusal of the docket proceedings of E.A.Nos.1418 & 1419 of 2015 respectively shows no notice given to the J.Dr. or to the learned Assistant Government Pleader as the case may be in the petition to

condone the delay and to restore the execution petition dismissed for default referred supra. Ultimately the Executing Court while saying no representation, allowed by the impugned orders on 04.01.2016 as seen from the execution petition docket order dated 18.01.2016 it is referred as E.A.Nos.1418 & 1419 of 2015 are allowed, EP is restored as per E.A.No.1418 of 2015 for filing sale papers and call on 10.02.2016. It is not known how the attachment automatically revives by virtue of the restoration of the E.P. despite the bar unless there is mention while dismissing the E.P., of attachment shall continue as per the settled law vide expression in **Vareed Jacob Vs. Sosamma**¹, leave about the attachment will not revive, the question of allowing the execution petition and delay condonation petition without notice to the J.Dr. or to the Assistant Government Pleader representing others, if any does not arise. Therefore the impugned orders of the lower Court dated 04.01.2016 allowing E.A.Nos.1418 & 1419 of 2015 without notice to the J.Dr.-LAO or Assistant Government Pleader as the case may be from the docket reflects no notice given is per se unsustainable apart from even restoration of the E.P. will not automatically revive the attachment as attachment order was not ordered to specifically continue while dismissing of E.P. on 08.10.2010. In view of the above, the further steps taken by the lower Court are unsustainable.

Having regard to the above, both the revisions are allowed by setting aside the impugned orders of the lower Court and restore E.A.Nos.1418 & 1419 of 2015 to the file of the lower

¹ 2004 (6) SCC 378

Court with a direction to give notice to the AGP and hear and pass appropriate orders on merits. Needless to say from the learned counsel for the revision petitioner-LAO represented by AGP says on verification of the calculation if at all any balance is payable they are ready to pay even according to the instructions of the LAO they paid what is already due.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 30.01.2018
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