

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3764 OF 2016

ORDER:

This civil revision petition is filed under Section 115 of CPC assailing the order dated 20.6.2016 passed in E.A.No.243 of 2015 in E.P.No.67 of 2014 in O.S.No.418 of 2011 on the file of the Court of I Additional Junior Civil Judge, Kakinada.

2. Heard learned counsel for both the parties.

3. The first respondent filed O.S.No.418 of 2011 on the file of the Court of I Additional Junior Civil Judge, Kakinada, against the petitioners for recovery of the suit amount. After full-fledged trial, the trial Court decreed the suit in favour of the first respondent and against the petitioners. In order to realise the decretal amount, the first respondent filed E.P.No.67 of 2014 and brought the schedule property in O.S.No.418 of 2011 for sale. In the auction conducted on 15.9.2015, the second respondent became successful bidder and the sale was knocked down in his favour. On 28.10.2015, the petitioner filed E.A.No.243 of 2015 under Order XXI Rule 89 of CPC to set aside the sale. The executing Court, by the impugned order, dismissed the E.A. Hence, the revision.

4. It is needless to say that one has to file application under Order XXI Rule 89 of CPC within a period of sixty days from the date of sale, as contemplated under Article 127 of the Limitation Act. It is an admitted fact that the petitioner filed the E.A., within the period of limitation. The executing Court dismissed the E.A., on the ground that the petitioner has not deposited the E.P., amount.

5. In order to appreciate the contention of learned counsel for the petitioner, it is not out of place to extract hereunder Rule 89 of Order XXI of CPC, which reads as follows:

Order XXI Rule 89 - Application to set aside sale on deposit

(1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his depositing in Court,--

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

6. A perusal of the above Rule clearly demonstrates that the person, who files application under Order XXI Rule 89 of CPC, has to deposit five per cent of the purchase amount as well as sale amount. Admittedly the petitioner has not deposited five per cent of the purchase amount as well as sale amount, as contemplated under the above Rule. Depositing of the amount is a condition precedent to entertain an application under Order XXI Rule 89 of CPC. For one reason or the other, the petitioner did not follow the procedure as contemplated under Order XXI Rule 89 of CPC. The executing Court considered the scope of Order XXI Rule 89 of CPC and dismissed the E.A. The findings recorded by the executing Court are supported by the material available on record. I am fully endorsing the findings recorded by the executing Court. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court.

7. In the result, the civil revision petition is dismissed. However, it is made clear that dismissal of this revision petition does not preclude the petitioner from withdrawing the money deposited in pursuance of the order of this Court dated 22.1.2018. Miscellaneous petitions, if any pending in this petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.7.2018

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