

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.3003 of 2018

08.06.2018

Between:

Medapati Venkata Rama Krishna Reddy
and another

..Petitioners

and

Yelamanchili Venkata Padma and others

..Respondents

Counsel for the petitioners: Mr.K.A.Narasimham

Counsel for the respondents: --

The Court made the following:



ORDER:

The decree holder in O.S.No.690 of 2014 filed this Civil Revision Petition feeling aggrieved by order, dated 26.02.2018, in E.A.No.4 of 2016 in E.P.No.7 of 2015 in O.S.No.690 of 2014 on the file of learned Special Sessions Judge for Trial of Cases under SCs & STs (POA) Act-cum-XI Additional District Judge, Visakhapatnam.

2. The aforementioned E.A. filed for calling for the attached amount in E.P.No.7 of 2015 has been dismissed by the Court below on two grounds *viz.*, (i) that the amount attached in the E.P. stood in the name of M/s.Vijaya Durga Fal G Brick Industry, while the decree was passed in the name of its proprietor – late M.Ramachandra Rao, and (ii) that in respect of the same amount, another garnishee order was received by the State Bank of Hyderabad for payment of a sum of Rs.19,44,414/- towards satisfaction of the decree in O.S.No.513 of 2014 filed by a third party and unless the Court adjudicates as to who is entitled to receive money in preference to the other or whether a ratable distribution is necessary, the application cannot be ordered.

3. As regards the first ground, there does not appear to be any dispute that M/s.Vijaya Durga FAL G Brick Industry was a proprietary concern. In law, a proprietary concern does not have a separate legal existence. While admittedly, the judgment debtor –

late M.Ramachandra Rao was the proprietor, the amount lying in the Bank account of the proprietary concern is liable for appropriation in satisfaction of the decree. The Court below has failed to appraise itself of this legal position and has erroneously put-forth this ground to reject the petitioners' application. As regards the second ground, I find some merit therein. It is not in dispute that against the same judgment debtor, a third party has obtained a decree in O.S.No.513 of 2014 and a garnishee order was issued by another Court of competent jurisdiction to the same garnishee for payment of a part of the amount lying with it. Unless an adjudication is made by the Court after hearing all the parties including the decree holder in O.S.No.513 of 2014, it is not possible to permit the petitioners to appropriate the entire amount lying to the credit of the proprietary concern to the exclusion of the said decree holder.

4. The questions whether the petitioners being second mortgagees (the Bank appears to be the first mortgagee and has realized its debt) are entitled to preference over the decree holder in O.S.No.513 of 2014 and in such a case, whether there is no need for a ratable distribution need to be examined in a separate application filed impleading the decree holder in O.S.No.513 of 2014. Accordingly, liberty is given to the petitioners to file such an application. If such an application is filed, the Court below shall

dispose of the same as expeditiously as possible after hearing all the parties.

5. Subject to the above observations and directions, the Civil Revision Petition is dismissed.

6. As a sequel to dismissal of the C.R.P., I.A.No.1 of 2018 filed by the petitioners for interim relief stands dismissed as infructuous.

08th June, 2018
GHN

C.V.NAGARJUNA REDDY, J

