

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.3496 OF 2018

ORDER
(Per Sri Justice Sanjay Kumar)

This civil revision petition, under Section 115 CPC, arises out of the order dated 16.04.2018 passed by the learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in E.A.No.16 of 2017 in E.A.No.665 of 2017 in E.P.No.9 of 2016 in O.S.No.809 of 2012.

The petitioner filed the subject application, E.A.No.16 of 2017, under Order 21 Rule 106 CPC read with Section 151 CPC to set aside the *ex parte* order dated 17.11.2017 and permit him to contest the execution proceedings. By the order dated 16.04.2018, the Executing Court dismissed the E.A. Aggrieved thereby, he is before this Court.

O.S.No.809 of 2012 was filed for recovery of a sum of Rs.11,00,020/-, with interest thereon, and was decreed on 09.12.2015. It may be noted that during the pendency of the suit, an order was passed by the trial Court under Order 38 Rule 5 CPC and pursuant thereto, the petitioner herein, being a guarantor, deposited Rs.11,00,020/- to the credit of the suit. After decretal of the suit, the plaintiff in O.S.No.809 of 2012 instituted E.P.No.9 of 2016 seeking execution. Therein, he filed E.A.No.665 of 2017 praying that the Executing Court should issue a cheque in his favour for the amount of Rs.11,00,020/- deposited by the petitioner-guarantor along with the interest accrued thereon, by adjusting it against his interest claim and the awarded costs. Thereupon, the Executing Court issued 'Notice to Show-Cause Why Execution Should Not Issued' to the petitioner-guarantor requiring him to appear on 17.11.2017 to show-cause why the execution should not be granted. As he failed to appear on the said day and was set *ex parte*, the petitioner filed

E.A.No.16 of 2017 stating that he was unable to move from his bed due to sickness on that day and praying that the *ex parte* order dated 17.11.2017 be set aside. The Executing Court observed that the petitioner-guarantor was not a party to E.P.No.9 of 2016 or O.S.No.809 of 2012 and held that he had no *locus standi* to file the set aside application. On this reasoning, the trial Court dismissed the E.A.

Heard Sri Gaddam Srinivas, learned counsel for the petitioner, and Sri Ch.C.Krishna Reddy, learned counsel for the first respondent-decree holder.

The Executing Court seems to have completely overlooked the fact that it had itself issued a notice to the petitioner-guarantor calling upon him to appear before it on 17.11.2017 to show-cause why the execution should not be granted. No doubt, the petitioner-guarantor is not a party to the suit or the execution proceedings but it is not in dispute that it was he who deposited the sum of Rs.11,00,020/- to the credit of the suit, in the capacity of a guarantor for the judgment debtor-defendant. It is therefore his money that is now sought to be withdrawn by the decree holder by virtue of his prayer in E.A.No.665 of 2017 filed in E.P.No.9 of 2016. That being so, it would be a blatant violation of the principles of natural justice to not allow an opportunity of hearing to the petitioner-guarantor, when it is his money that is sought to be appropriated by the decree holder. The petitioner-guarantor is deemed to have stepped into the shoes of the judgment debtor by virtue of his having parted with his own money in the capacity of a guarantor.

The order under revision is accordingly set aside and the civil revision petition is allowed. The learned XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, shall therefore allow

the petitioner to participate in the execution proceedings in the capacity of a guarantor of the judgment debtor-defendant and afford him an opportunity of hearing before deciding E.A.No.665 of 2017 in E.P.No.9 of 2016 in O.S.No.809 of 2012.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

6th DECEMBER, 2018

PGS

