THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.590 OF 2014

ORDER:-

This revision petition is filed questioning the order, dated 02-01-2014 passed in E.P.No.12 of 2012 in O.S.No.143 of 2006 by the Additional Senior Civil Judge, Eluru.

2. The impugned order is passed in an Execution Petition which is filed for realization of the decretal debt by way of a sale of the property mentioned therein in a public auction to realize the decretal amount. The matter was heard in the lower court and after considering the objections that were raised by the Judgment Debtor (JDR), the court below negatived all the contentions raised by the JDR and passed the orders for further proceedings in the E.P. Questioning the said order, the present C.R.P is filed.

3. This Court has heard Sri Rama Mohan Palanki, learned counsel for the revision petitioner. The learned counsel for the respondent did not appear despite adequate opportunities.

4. The first argument of the learned counsel for the petitioner is that the decree passed by the court below is without jurisdiction and that he can attack the same even in collateral proceedings. He relies upon a judgment of the Supreme Court in *Kudapa Subbanna Vs. Chitturi*

Subbanna and others([1]) to the effect that the court has no jurisdiction. The first JDR which is a partnership firm is not registered under the provisions of Section 69 of the Indian Partnership Act,1932 (for short "the Act"). The learned counsel submits that no suit to enforce or right can be filed against an unregistered firm. It is his contention that the first respondent is an unregistered firm and, therefore, the proceedings are vitiated. This court notices that Section 69(1) and (2) of the Act deals with right of a firm to file a suit. Section 69(1) and (2) of the Act read as under:-

<u>69. Effect of non-registration</u>:-

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firm as partners in the firm.

[1] AIR 1962 A.P 500(F.B)

5. A plain reading of the above Section shows that no suit can be filed or instituted by or on behalf of the firm. There is no provision or prohibition for the suit being filed against an unregistered firm. An unregistered firm is merely an association of individuals and there is no prohibition. The learned counsel also relies upon the ground of fraud. He argues that the entire proceedings are vitiated by a fraud and collusion. It is his contention that as the decree and further proceedings are obtained by a fraud, the order passed by the lower court is incorrect. This court finds absolutely no whisper of the details of the fraud as required under law. Since fraud vitiates the most solemn transaction including of a judicial decision, the pleadings of fraud must be clear and the details of fraud are also to be clearly mentioned. In the case on hand, there is absolutely no whisper of the alleged fraud except alleging collusion. This ground is also, therefore, not sustainable. The last submission of the learned counsel for the petitioner is that the Decree Holder is executing the decree only against the petitioner and not against the others. He states that equity should be considered and that the petitioner is ready to pay his $1/10^{th}$ share of the decretal amount as they are only liable to pay to that extent. According to the learned counsel, his liability is only limited to his share in a partnership firm and that he

is not liable to pay anything more. It is an admitted fact that the petitioner is one of the partners of the firm. Therefore, the contention that the partner is liable to pay his share as determined by him is not correct. Section 25 of the Act clearly states that every partner is liable jointly and severally for all the acts of a firm. Therefore, all the three grounds/objections that are raised by the learned counsel for the petitioner are found to be untenable. The impugned order is correct and in the opinion of this court is a well reasoned order. There are no grounds made out in the revision to interfere.

Accordingly, the Revision Petition is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

12-11-2018
TSNR