

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4277 of 2018

ORDER:

The revision petitioner is no other than the J.Dr./defendant in E.P.No.21 of 2014 pursuant to the money decree in OS.No.83 of 2012 on the file of learned Senior Civil Judge, Kavali. The learned Senior Civil Judge in the execution petition from the relief sought by the respondent/decree holder/plaintiff to recover the decree amount sought the property to sale, the J.Dr. raised objections in bringing the property to sale saying not liable for bringing to sale, leave about already prior to the passing of the decree by virtue of the order of attachment before judgment attached. As per Order 38 Rule 11-A CPC for attachment before judgment, the proceeding of attachment in execution applies and no fresh attachment is required under Order 21 Rule 54 CPC after obtaining of decree, but for to proceed further pursuant to the attachment before judgment made final in bringing the property to sale under Rules 66 r/w 64 of Order 21 CPC.

Once the property already attached prior to the final decree of the revision petitioner's debtor IP.No.8 of 2012, leave about the property was not entrusted in the debtor IP by the revision petitioner/J.Dr., debtor IP petitioner, to the official receiver that to be appointed as interim receiver automatically and it is now saying a petition is filed IA.No.436

of 2018 in the said IP on 10.09.2018 under Section 52 of the Provincial Insolvency Act in asking the Insolvency Court pending adjudication of the debtor IP to take the property and entrust to the official receiver to manage with interim custody, no order even passed as on date much less any such petition is not even filed by the time learned Senior Civil Judge passed the order in proceeding further of bring the property to sale in realization of the decree debt, leave about if there is ratable distribution from decree holders so to claim subject to the coming within the scope and subject to claim under Section 73 CPC, for this Court while sitting in the revision there is nothing to interfere. In fact a perusal of the debtor IP.No.8 of 2012 shows among the 14 respondents, respondent Nos.1, 2, 3, 5 to 10 & 14 are contesting and the others are private parties. The IP is pending since the year 2012. The debtor IP is practically a summary adjudication that too all the debts mentioned in the 'A' schedule in favour of the respondents including the decree holder shown as 13th respondent are covered by so called pro-note debts.

Having regard to the above, the learned Senior Civil Judge where the execution petition also pending shall disposed of the debtor IP within three (3) months from the date of receipt of this order by postponing the present execution petition covered by the subject matter of the revision meantime only for three months. This will not give any concession to the revision petitioner herein-J.Dr.

(petitioner in debtor IP) if the IP proceedings not completed within the time, to ask for postponement of the execution proceedings in EP.No.21 of 2014 later, but for if he is able to show the property cannot be brought to sale, by invoking Section 47 CPC.

Having regard to the above and in the result, this Civil Revision is disposed of. No costs.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 27.09.2018
ska

