HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION Nos.3712, 3668 AND 5127 OF 2017

COMMON ORDER:

C.R.P. No.3712 of 2017 is directed against the order dated 29.06.2017, in E.A. No.578 of 2017 in E.P. No.89 of 2011 in O.S. No.16 of 1999 passed by the learned Principal Senior Civil Judge, Mancherial, by which, the learned Senior Civil Judge refusing to set aside the sale of immovable property held on 27.11.2015, dismissed the application under Order - XXI Rules - 89 and 90 read with Section 151 of the code of Civil Procedure, 1908 (for short 'CPC') filed by judgment-debtor No.1 viz., Ravula Laxman, revision petitioner herein.

2. C.R.P. No.3668 of 2017 arises out of the order dated 29.06.2017, in E.A. No.579 of 2017 in E.P. No.89 of 2011 in O.S. No.16 of 1999, filed by the very same judgment-debtor, whereby, the very same Court refusing to grant stay of the execution proceedings, dismissed the application under Order - XXI Rule - 26 read with Section 151 of CPC,

3. C.R.P. No.5127 of 2017 arises out of the order dated 22.09.2017, in E.A. No.84 of 2016 in E.P. No.89 of 2011 in O.S. No.16 of 1999 passed by the very same Court directing to issue fresh warrant of delivery of possession and also according police aid to the Court bailiff; which application was filed by the auction

purchaser under Order - XXI Rules 95 and 97 read with Section 151 of CPC.

4. Though, the suit filed by respondent No.1 viz., State Bank of Hyderabad, Mancherial Branch, Mancherial in O.S. No.16 of 1999 was decreed against the revision petitioner viz., Ravula Laxman, and respondent Nos.3 and 4 herein viz., Ravula Shankar and Sudamalla Rajam, respectively, it appears, during pendency of the execution proceedings, or, at least, subsequent to disposal of the original suit, respondent No.3 herein viz., Ravula Shankar, who is judgment-debtor No.2, died. Thus, in the execution proceedings, judgment-debtor Nos.1 and 3 were available. Later, it appears that even respondent No.4 herein viz., Sudamalla Rajam, who is judgment-debtor No.3, expired. The relevant details are wanting.

5. All these three Civil Revision Petitions are taken up together for disposal by this common order for the reason that the result in C.R.P. No.3712 of 2017 would have bearing on the controversy in other two Civil Revision Petitions.

6. Heard Sri Mahadev Anyrambhatla, learned counsel for the revision petitioner (judgment-debtor No.1) in all these three revision petitions, and Sri V. Ravi Kiran Rao, learned counsel for respondent No.2 (auction purchaser) in all these three revision petitions, and perused the material on record.

7. Before adverting to the grounds raised in these revision petitions, it would be appropriate to refer to certain relevant facts.

(a) Respondent No.1, State Bank of Hyderabad, Mancherial Branch, filed a regular suit in O.S. No.16 of 1999 on the file of Senior Civil Judge, Asifabad, against three defendants i.e., the revision petitioner herein (judgment debtor No.1) and deceased respondent Nos.3 and 4 herein (judgment debtor Nos.2 and 3). The plaint was presented under Order - XXXIV Rule - 4 of CPC.

(b) The relief sought for was to grant a preliminary mortgage decree for a sum of Rs.2,42,806/- with future interest at the rate of 15.81% per annum with quarterly rests from the date of filing the suit till realisation in terms of Order - XXXIV of CPC on the mortgaged properties belonging to defendant Nos.1 to 3 (revision petitioner and respondent Nos.3 and 4 herein) and also sought for a personal decree against them for balance amount, in case, the sale proceedings are insufficient to satisfy the claim.

(c) It is not clear whether defendant Nos.1 to 3 (revision petitioner and respondent Nos.3 and 4 herein) did contest the suit or not. However, the suit was decreed later on an application filed by the decree-holder (respondent No.1 herein). Final decree was passed on 26.08.2010. It is not known whether defendant Nos.1 to 3 did contest the final decree. Pursuant thereto, the decree-holder filed E.P. No.89 of 2011 for realisation of the decreetal amount by sale of the mortgaged properties. It appears, on 15.02.2012, the judgment-debtors were set *ex parte*. Later, on 21.01.2013, they filed E.A. No.6 of 0213 to set aside the *ex parte* order passed on 21.01.2013, in the execution proceedings. The said application was dismissed for default on 21.02.2013 and, thus, the order has become final. Later, sale papers were filed and checked.

(d) Sale notices were issued to the judgment-debtors on 25.02.2014. On 09.07.2014, judgment-debtor No.3 was set *ex parte* as he did not turn up despite receipt of notice, and adjourned awaiting notices of judgment-debtor Nos.1 and 2. On 26.09.2014, judgment-debtor No.1 was also set *ex parte* since he refused to receive notice, and, it was reported that judgment-debtor No.2 was no more. Thereafter, the E.P. was adjourned for taking steps to bring the legal representatives of judgment-debtor No.2 on record. On 07.11.2014, the decree-holder not pressed execution proceedings against judgment-debtor No.2 and, thus, it was dismissed against judgment-debtor No.2. Thus, other steps were followed.

(e) On 14.07.2015, having heard the learned counsel for the decree-holder, while judgment-debtor No.1 was also present, order was passed to proclaim and sale by way of publication on 17.08.2015 and adjourned to 24.08.2015. On 24.08.2015 since judgment-debtor No.1 was present and sought time, adjourned to 30.09.2015, on which day, the Court directing to proclaim and sell the property, fixed the date as 13.11.2015. On 13.11.2015, judgment-debtor No.1 was present and he paid Rs.25,000/- to the decree-holder as per E.A. No.173 of 2015 filed by him requesting to adjourn the case so as to settle the matter soon.

(f) On 27.11.2015, the trial Court recording the presence of judgment-debtor No.1 and refusing to grant time sought through a memo filed by judgment-debtor No.1, proceeded with sale and the bid was knocked in favour of the highest bidder, who is respondent No.2 herein viz., K. Satya Sri Latha for Rs.13,00,000/-, on which day, 25% of purchase money i.e., Rs.3,25,000/- was deposited under Order - XXI Rule - 84 of CPC and Rs.65,000/- towards poundage computed at the rate of 5% of purchase money and for depositing the remaining 75% of purchase money and for confirmation of sale, adjourned to 11.12.2015.

(g) On 14.12.2015, the auction purchaser, deposited the amount, whereas the revision petitioner filed E.A. No.212 of 2015 seeking to set aside the sale agreeing to pay Rs.65,000/- poundage to the auction purchaser, but that application was returned with certain objections. The said E.A. was re-submitted. On 21.12.2015, since objection No.2 alone was complied with and other objections were not complied with, the said application was rejected. Since sale consideration was deposited with the Sub-Registrar, Mancherial, after calling for particulars of registration charges of the property, the sale was registered on 27.02.2016 by deputing the Court bailiff.

(h) Later, E.A. No.84 of 2016 was filed by the auction purchaser for delivery of possession and warrant of delivery of possession relating to E.P. schedule property was issued on 01.09.2016.

(i) While the things stood thus, E.A. No.578 of 2017 was filed, from which C.R.P. No.3712 of 2017 would arise.

(j) In the said execution application i.e., E.A. No.578 of 2017, judgment-debtor No.1 contended that though, real value of the property was more than Rs.50,00,000/- and though, he was ready to pay the decreetal amount, the amount through auction realised was only Rs.13,00,000/- and even the death of judgment-debtor Nos.2 and 3 had taken place even prior to auction and their legal representatives were not brought on record, and, therefore, the same is liable to be dismissed.

8. The learned Senior Civil Judge, Mancherial, having formulated the point for consideration, upon hearing both sides, noting that a similar application was already filed in E.A. No.212 of 2015 and the said petition was rejected, observed that the sale was held on 27.11.2015 and it was confirmed on 04.01.2016 and the decree-holder filed full satisfaction memo after receipt of the due amount. The learned Senior Civil Judge also referred to the order dated 27.09.2016 passed by this Court in C.R.P. No.1379 of 2016, which was preferred challenging the rejection order passed in E.A.

No.212 of 2015 and the observations made by this Court were extracted thus:

> "2. There is nothing to interfere with the impugned order of the Principal Senior Civil Judge, Mancherial, in E.A. No.212 of 2015 in E.P. No.89 of 2011 dated 04.01.2016, but for to say from the saying of the revision petitioners/judgment debtors of there are talks and likelihood of settlement, though the learned counsel for auction purchaser saying there is no such information.
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> 3. In view of the above representation, the revision is disposed of granting one month time from today by keeping existing *status-quo,* for any talks to fructify, meanwhile else law will take recourse.
>
> 4. Miscellaneous Petitions pending, if any, shall stand closed."

Thereafter, observing that the executing Court has followed the procedure prescribed for auction of the immovable property, and there are no sufficient grounds to set aside the sale held on 27.11.2015 which was confirmed on 04.01.2016, dismissed the petition. Aggrieved over the said order, judgment-debtor No.1 preferred C.R.P. No.3712 of 2017.

9. For convenience sake, the parties herein are referred to as judgment debtor Nos.1, 2 and 3, decree holder and auction purchaser as per their status.

10(a) In the grounds, firstly, it is stated that the suit filed by the decree-holder itself is not maintainable in civil Court, as the jurisdiction of the civil Court is ousted under Section 18 read with Section 17 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which came into effect from 24.06.1993, and, thus, the decree passed by the Civil Court is a nullity in the eye of law for want of jurisdiction.

(b) Second is, that the procedure prescribed in relation to proclamation of sale has not been adhered to in the sense that before fixing the terms of sale no opportunity was given to the judgment-debtor to indicate value of the properties sought to be sold and that there was no proper publication of sale by beat of drum and by affixing the proclamation notices at the places concerned.

(c) Third is, that in the proclamation of sale, the value of the properties sought to be sold was not indicated by the decree-holder nor the values indicated by the judgment-debtor were incorporated.

(d) Fourth is, the executing Court has not seen and considered whether it was necessary for realisation of the decreetal amount to put all the three properties to sale.

(e) Judgment Debtor No.1 would place reliance on the rulings of the Hon'ble Supreme Court in **Lal Chand v. VIII Additional District Judge**[1] to the effect that if the proclamation of sale is not

[1] (1997) 4 SCC 356

proper and if the necessary particulars are not mentioned in such notice of proclamation, it would cause great prejudice to the interest of the judgment-debtor and the sale pursuant to such proclamation is clearly illegal, and, therefore, judgment debtor No.1 would contend that the executing Court ought to have allowed his application by setting aside the sale so also the application seeking stay of further execution proceedings.

(f) Concerning rejection of the application in E.A. No.212 of 2015, judgment debtor No.1 would contend that the said application was not decided on merits and, in fact, no counter was filed by the decree-holder or the auction purchaser, but, it was rejected on the ground that there was no proper representation.

(g) He would also state that the executing Court ought to have noticed that the order dated 27.09.2016 passed by this Court in C.R.P. No.1379 of 2016 filed against the order in E.A. No.212of 2015, there was a proposal of compromise between himself and the auction purchaser, and, therefore, this Court did not go into the merits of the case and disposed of the C.R.P. recording the proposal for compromise.

(h) He would further state that the executing Court did not note that only because the auction purchaser went back against the proposal for compromise, E.A. No.578 of 2017 was filed requesting to set aside the sale. Lastly, he would submit that Order - XXXIV Rule -

4 of CPC contemplates sale of such portion of the property mortgaged which would be just sufficient to realise the amount, which was not strictly adhered to by the Court below and auctioned all the three items of the schedule, and, therefore, sought to set aside the order passed by the Court below and allow E.A. No.578 of 2017.

(i) E.A. No.578 of 2017, from which the order under challenge arises, was filed under Order - XXI Rules - 89 and 90 read with Section 151 of CPC. Request made is to set aside the sale of property held on 27.11.2015 on deposit of required amount under law and to permit judgment debtor No.1 to proceed with the E.P. in the interest of justice.

(j) In E.P. No.89 of 2011, in the schedule, it is shown that item No.1 as the property of judgment-debtor No.1, described thus:

"<u>Property of JDR No.1</u>

1. The Bangalore tiled House bearing no. 3-91 with extent measuring 374 sq. yards in sy.no. 6, and Bangalore titled house no. 3-91/1 with extent measuring 200 sq. yards in sy.no. 6, both situated at Mulkala village, Mandal Mancherial, dist. Adilabad, bounded by:-

East	-	Way
West	-	Land of Jangam Naryana
North	-	House of Ravula Rajaiah
South	-	House of Ravula Srihari"

Item No.2 is shown as belonging to judgment-debtor No.3, described thus:

"Property of JDR NO. 3

1. The wet land measuring ac. 1-10 gts. In sy.no 316 situated at Kundaram vilale, Mandal Jaipur, dist. Adilabad, bounded by:-

East	-	Land of Raj Mohammad
West	-	Land of Nimma Sailu
North	-	Land of N. Lachaiah
South	-	Land of N. Sathaiah"

11(a) The learned counsel for judgment debtor No.1 (revision petitioner) would mainly contend that in the proclamation, value of the properties were not at all mentioned, and, therefore, proceeding with auctioning the properties based on such proclamation issued, that too, without mentioning the value indicated by the judgment-debtor in the proclamation, amounts to material irregularity, and, therefore, the auction is liable to be set aside.

(b) His next submission is that the mandatory provisions of Order - XXXIV Rule - 4 of CPC was not strictly adhered to and the Court below ought to have proceeded with auction even after intending to proceed with only in regard to such portion of the property mortgaged which should be just sufficient to realise the decreetal amount and the decreetal amount being Rs.4,32,446/- and incidental expenses going on for auctioning all three items in the property for a sum of Rs.13,00,000/-, though, the property was of the value of more than Rs.50,00,000/-, accounts for material irregularity warranting setting aside the entire sale and the consequent confirmation of the sale.

(c) Incidentally, he would also submit that in C.R.P. No.1379 of 2016 preferred against the order in E.A. No.212 of 2015, this Court in fact, made a proposal of compromise between the judgment-debtor and the auction purchaser and disposed it of without going into the merits and since the auction purchaser went back against the proposal for compromise, the judgment debtor No.1 was constrained to file E.A. No.578 of 2017 and the Court below ought to have taken note of the said fact, placed reliance in **Nachimuthu Goundar v. Amaravathi**[2] rendered by a learned single Judge of Madras High Court in an application filed under Section 47 of CPC holding that due publicity was not given to the auction proceedings as only two persons bid at the auction, one of them being the second appellant, who is admittedly brother-in-law of the younger brother of the first appellant, and the auction proceedings were shrouded in secrecy and care was taken to see that the legal representatives of the deceased judgment-debtor were kept in dark about the execution proceedings, affirmed the order passed by the Courts below holding that the Court's sale held on 06.03.1967 was a nullity.

[2] (1975) 1 MLJ 333

(d) In **Lal Chand**[1]**,** the Hon'ble Supreme Court finding that the sale was notified in the village by beat of drum, only after the bid was started, held that it amounted to sale without proper notice and publicity and was, therefore, clearly illegal having caused great prejudice to the interest of the judgment-debtor.

(e) In **Pappasani Narayana Reddy v. Mandem Reddappa Reddy**[3]**,** a learned single Judge of this Court finding that no notice was served on the judgment-debtor as contemplated under Order - XXI Rule - 54(1A) of CPC or under Order 21 Rule - 66(2) of CPC, holding that the Courts below rightly set aside the sale placing reliance in **M.P.N. Reddi v. Maddi Venkayya** and **Khasim Bi v. T.G. Lakshmayya Thimmayya Setty**, dismissed the revision petition.

(f) In **S. Mariyappa (dead) by L.Rs. v. Siddappa**[4]**,** the Hon'ble Supreme Court while emphasising the duty of the executing Court to consider whether sale of only a part of the property would be sufficient to deal with decreetal debt finding that the executing Court did not observe the said duty and Ac.1-00 of agricultural land was sold in execution for a paltry sum of Rs.1,500/- plus a prior mortgage debt of Rs.7,000/- while the decreetal amount was Rs.8,000/- only, set aside the sale granting liberty to the judgment-debtor to seek execution of his decree in accordance with law. The Hon'ble

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[3] AIR 2005 AP 239
[4] (2005) 10 SCC 235

Supreme Court held that the pre-sale illegalities committed in the execution are amenable to the remedy under Section 47 of CPC and post-sale illegalities or irregularities causing substantial injury to the judgment-debtor are covered under Order - XXI Rule - 90 of CPC, while stating that sub-rule (1) thereof covers the field of material irregularities or fraud in publicity or conducting the sale and sub-rule (2) enjoins proof thereof and the Court should find that by reason thereof, the applicant sustained substantial injury.

12(a) Sri V. Ravi Kiran Rao, learned counsel for the auction purchaser (respondent No.2), would submit that there are neither irregularities nor illegalities in following the procedure prescribed for auctioning the properties, and therefore, none of the grounds raised by judgment debtor No.1 in all these three (3) petitions are worthy of acceptance.

(b) The learned counsel would submit that any objection as to the irregularity in proclamation of sale ought to be challenged at the relevant time, more particularly, when judgment-debtor No.1 has been although present, when relevant steps in the execution proceedings were taken by the Court below. It is also according to the learned counsel that the sale certificate issued would clearly show that the value of the mortgaged property put to sale in the proclamation was shown as Rs.1,40,000/- and, therefore, it cannot be said that the proclamation did not indicate the value furnished by the judgment-debtor or by the decree-holder.

(c) The learned counsel also would submit that when E.A. No.212 of 2015 was rejected by the Court below and C.R.P. No.1379 of 2016 preferred by judgment-debtor No.1 was even disposed of affirming the rejection order passed by the executing Court and merely because, *status quo* order was extended for a period of one month to enable compromise or settlement between the parties, if any, though, the order indicates that the auction purchaser did oppose such a proposal, certainly, would not give a right to judgment debtor No.1 to once again file E.A. No.578 of 20167 inviting the order under challenge herein.

(d) The learned counsel also placed reliance in **R.P.A. Vallimmal v. Palanichami Nadar**[5], wherein, the Hon'ble Supreme Court held that objection can only be made once and not repeatedly, when title of the original owner having once been negatived and became final, besides objection as to excess execution having not been raised earlier to proclamation of sale, cannot be raised again by her heir after title has been lost and became final. The Hon'ble Supreme Court also held that though, Order - XXI Rule - 90 (3) of CPC may not be strictly construed so as to put a fetter on the Court, due to non-raising of the objection before proclamation of sale and the objection could be raised even at later stage, but, since the title has already been lost and has become final, the petitioner cannot agitate

[5] AIR 1997 SC 1996

executability of the decree in the absence of any legal title to question correctness of the execution.

(e) The ruling in **Rajinder Singh v. Ramdhar Singh**[6] is relied on by the learned counsel for the auction purchaser to meet the ground agitated by the judgment-debtor that though, adequate price was not fetched and though, the real value of the auctioned properties was Rs.50,00,000/-, they were sold for Rs.13,00,000/-, as the Hon'ble Supreme Court holds that mere inadequacy of price is not such a ground to set aside the Court's sale.

(f) In **Kadiyala Rama Rao v. Gutala Kahna Rao (dead) by LRs.**[7], the Hon'ble Supreme Court in the context of enunciating the three factors that emerge from Order - XXI Rule - 90 of CPC and the third requirement, is analogous to the doctrine of constructive *res-judicata* as envisaged under Section 11 of CPC held in paragraph No.8, thus:

> "8. The third requirement as above needs, however, special mention by reason of the factum of incorporation of the principles analogous to the doctrine of constructive res judicata as envisaged under Section 11 of the Code. The legislative intent is clear and categorical in both the provisions as above that in the event of an intentional relinquishment of a known right, question of proceeding further would not arise."

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[6] (2001) 6 SCC 213
[7] (2000) 3 SCC 87

(g) For the proposition that the proclamation was defective, could not be entertained, after the auction purchaser depositing the requisite amount, the learned counsel places reliance in **A. Parvatham v. Bank of Baroda**[8]

13. The controversy in the present revision petitions relates to three main aspects.

(a) The first relates to non-adherence to the procedure prescribed in relation to the proclamation of the sale, which, according to the learned counsel for judgment debtor No.1, would vitiate the sale.

(b) Second, the executing Court while passing the orders in E.A. No.578 of 2017 did not properly comprehend the order passed by this Court in the C.R.P. No.1379 of 2016 which refers to the proposal of compromise between the judgment-debtor and the auction purchaser, and the proposal for compromise was frustrated on account of the auction purchaser going back.

(c) Third, Order - XXXIV Rule - 4 of CPC contemplates sale of such portion of the property mortgaged, which would be just sufficient to satisfy the amount, which the executing Court completely ignored.

14. Incidentally, the submission of the learned counsel for judgment debtor No.1 has been that the very auction is *void abinitio*

[8] AIR 2000 MADRAS 326

for the reason that steps were not pursued to bring the legal representatives of deceased judgment-debtor Nos.2 and 3.

15. Yet another submission is that the Court below overlooked to notice that the suit filed by the decree-holder, viz., State Bank of Hyderabad is not maintainable in Civil Court as the Civil Court's jurisdiction is ousted under Section 18 read with Section 17 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

16. The ancillary arguments advanced by the learned counsel will be taken up initially before adverting to the main submission.

17. Concerning the submission that the failure on the part of the decree-holder in bringing the legal representatives of deceased judgment-debtor Nos.2 and 3, for two reasons, the argument has to be construed as without any merit. First, it is to be stated that Rule - 12 of Order - XXII of CPC comes to the rescue of the decree-holder. It states that nothing in Rules - 3, 4 and 8 of CPC shall apply to the proceedings in execution of a decree or order, which, thus, connotes that the execution proceedings do not abate by the death of a judgment-debtor or a decree-holder, but, however, substitution of legal representatives is permissible in the execution proceedings also.

18. When viewed from the submissions made by both sides, it is clear that the counsel for the judgment-debtors nor judgment No.1 did bring it to the notice of the executing Court about the death of either judgment-debtor No.2 or judgment-debtor No.3 at the

appropriate stage. For the first time, such a submission is made in this Court in the present revision petitions. No such ground is raised. In fact, when Rule - 12 clearly provides non-applicability of Rules - 3, 4 and 8 of Order - XXII of CPC, abatement does not arise at all, and, therefore, that submission is without any merit.

19. The second reason is, as already mentioned in the above, that Item Nos.1 and 2 of the E.P. schedule properties are shown as owned by judgment-debtor No.1 and judgment-debtor No.3 respectively. At the inceptive stage, when the notices were sent in the execution proceedings, notice on judgment-debtor No.1 was served and he has been attending the Court throughout, whereas, judgment-debtor No.3 refused to receive the notice and thus, deemed service, was considered and judgment-debtor No.3 was set *ex-parte.* It is not forthcoming from the submissions made by the learned counsel for judgment debtor No.1 as to when the death of judgment-debtor No.3 did take place. When the proceedings were continuing, at every stage, the participation of judgment-debtor No.1 is to be found, and, in fact, he did not inform the death of judgment-debtor No.3, and, therefore, it cannot now be canvassed that failure to bring the legal representatives of judgment-debtor Nos.2 and 3 vitiates the sale. Thus, looking from this angle also, there is no merit in the submission made by the learned counsel for judgment debtor No.1.

20. Concerning other incidental argument advanced by the learned counsel for judgment debtor No.1 that the Civil Court lacks jurisdiction and, therefore, judgment and the decree passed by the trial Court were in illegal exercise of jurisdiction; again, that ground is not agitated at any stage or at least, in the earlier application filed in E.A. No.212 of 2015 nor in the grounds mentioned in C.R.P. No.1379 of 2016 challenging the rejection order passed in E.A. No.212 of 2015. Further, the execution application in E.A. No.578 of 2017 is filed under Order - XXII Rules - 18 and 19 of CPC, but, not the application under Section 47 of CPC. The very fact that judgment debtor No.1 never intended to file the application under Section 47 of CPC itself would clearly condemn the submission now made. This Court, or for that matter, the execution Court, can only examine whether or not the ingredients of Sections 89 and 90 of CPC were brought out by judgment-debtor No.1. The powers of the executing Court were circumscribed by the provisions of Sections 89 and 90 of CPC and cannot travel beyond the scope thereof. Therefore, it is not now open for judgment debtor No.1 to get contended that the Civil Court lacked jurisdiction and the decree and judgment do not bind him. It is settled proposition that the executing Court cannot go behind the decree. Therefore, even the said argument is without any merit. There is one vital circumstance that exists in the present case. By virtue of operation of the principle of *res-judicata,* the Court below while referring to rejection of E.A. No.212 of 2015, in fact, extracted the

order passed by this Court in C.R.P. No.1379 of 2016, which was filed for the very same purpose for which E.A. No.578 of 2017 was filed. In fact, the rejection order passed in E.A. No.212 of 2015 attained finality as judgment debtor No.1 became unsuccessful in C.R.P. No.1379 of 2016 filed by him challenging the order therein passed by the executing Court. At the cost of repetition, it would be appropriate to refer to the order passed by this Court earlier, which reads thus:

> "Heard both sides at length and perused the material on record.
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> 2. There is nothing to interfere with the impugned order of the Principal Senior Civil Judge, Mancherial, in E.A. No.212 of 2015 in E.P. No.89 of 2011 dated 04.01.2016, but for to say from the saying of the revision petitioners/judgment debtors of there are talks and likelihood of settlement, though the learned counsel for auction purchaser saying there is no such information.
>
> 3. In view of the above representation, the revision is disposed of granting one month time from today by keeping existing *status quo,* for any talks to fructify, meanwhile else law will take recourse.
>
> 4. Miscellaneous Petitions pending, if any, shall stand closed. No costs."

21. The observation in the order in paragraph No.2 would clearly reflect that there is nothing to interfere with the impugned

order passed in E.A. No.212 of 2015. Even, it also clearly reflects that the learned counsel for the auction purchaser expressed that there was no such information as to proposal for settlement between the judgment-debtor and the auction purchaser. The one month time granted by this Court earlier in the said C.R.P. was for continuation of *status quo* order for any talks to fructify and it emphasised that meanwhile, else, law will take course. When the principle of constructive *res-judicata* comes into vogue in the present situation, certainly, judgment debtor No.1 is barred in filing E.A. No.578 of 2017.

22. In the said context, the ruling in **Kadiyala Rama Rao[7],** relied on by the learned counsel for the auction purchaser is worth referring, relevant portion of which is extracted hereinabove.

23. The said principle comes into vogue in the present case for the reason that when the very proclamation is attacked now, when E.A. No.578 of 2017 was filed, attacking the grounds of irregularities in conducting sale and fraud which ought to have been raised at the appropriate stage i.e., after the proclamation was made, before the next step of auction being ordered to be notified. Though, judgment-debtor No.1 was present as indicated in the dates and events presented by himself, the silence maintained by him in allowing the auction to be held though, subsequent to deposit of 1/4th amount on the date of auction by the auction purchaser coming with a memo, offering to pay the auction amount including poundage, which was even considered

by the executing Court, but, later found that he did not stick to it, are all the circumstances that completely condemn the plea taken by judgment-debtor. Thus, it is to be held that the very filing of E.A. No.578 of 2017 appears to be wrong and not maintainable in view of the rejection order passed in E.A. No.212 of 2015 which attained finality when he became unsuccessful in C.R.P. No.1379 of 2016, where this Court observed that there was nothing to interfere with the impugned order.

24. Adverting to the main submissions, so far as non-adherence to the procedure in relation to proclamation of the sale is concerned, the learned counsel for the judgment-debtor has mainly relies on the ruling in **Lal Chand**[1], where the Hon'ble Supreme Court has held that the sale was bad as the Court made no attempt to put up only a reasonable portion of the judgment-debtor's property to sale. However, it is to be noticed that the Hon'ble Supreme Court found that there were material irregularities in conducting the sale as the procedure prescribed was violated. The expression of the Hon'ble Supreme Court in paragraph No.17 was that the sale was conducted without there being any proper notice and publicity as is evident from the report submitted by the Court Amin since the sale was notified in the village by beat of drum only after the bid was started and thereafter, people started coming and five persons including the respondent therein participated in the bid. So, that part of the procedure adopted was held by the Hon'ble Supreme Court as clearly

illegal and caused great prejudice to the interest of the appellant, relying on the decision in **Desh Bandhu Gupta v. N.L. Anand & Rajindner Singh** [(1994) 1 SCC 131].

25. The other infirmity found by the Hon'ble Supreme Court is failure on the part of the decree-holder in making no attempt for sale of a reasonable portion for realisation of the decreetal debt, referring to the provisions of Order - XXI Rule 64 of CPC. The ruling in **S. Mariyappa**[4] also is to the same effect rendered in the context of Order - XXI Rule 64 of CPC. The ruling in **Pappasani Narayana Reddy**[3]**,** where the sale was set aside was based on the ground that fresh notice issued by the Court was not properly served, of course, this decision would not render any assistance to judgment debtor No.1 for the reasons mentioned above, as judgment-debtor No.1, was always present, whereas judgment debtor No.3 refused to receive notice and the death of judgment debtor No.3 was not forthcoming till the sale was confirmed. The decision in **Nachimuthu Goundar**[2] was in the context of the order rendered in an application under Section 47 of CPC, but not under Order - 21 Rule 89 of CPC.

26. On the other hand, the decision in **R.P.A. Valliammal**[5] relied on by the learned counsel for the auction purchaser rendered by the Hon'ble Supreme Court and the Bench presided over by the very same Hon'ble Senior Judge, decided the case in **Lal Chand**[1]**,** lays down the objections as to excess execution having not been raised earlier to proclamation of sale cannot be raised after title had been lost

and became final and even title of original owner once been negatived and became final cannot be raised again by the heirs.

27. When examined the conduct of the judgment-debtor in the revision filed challenging the order in E.A. No.212 of 2015, the grounds of which have been placed for perusal of this Court, judgment debtor - revision petitioner, who is also revision petitioner therein, has stated that value of the property was Rs.30,00,000/- and it was auctioned for a paltry sum of Rs.13,00,000/-. When again he preferred the present revision, he would state in the revision petition that the property would fetch Rs.50,00,000/-. Thus, there is no consistency in the stand taken by him and, thus, it appears that only for the purpose of getting the sale set aside, he has come up with such a stand which is certainly an after thought. Further, such an objection was not raised at all, before the sale was held.

28. Even the submission in regard to non-mention of value of the property in the proclamation, which is taken as one of the grounds for setting aside the sale, on the ground that it amounts to material irregularity, it is to be stated that judgment debtor No.1 being present in the Court cannot come with the said ground after the sale was held and confirmed, and as already observed in the above, and when he filed memo, the executing Court did consider the request and later i.e., beyond the time for payment of balance 3/4th amount, only confirmed the sale issuing sale certificate by getting the property registered through the Court bailiff. Thus, the very fact that he has filed a memo

which finds reference from the chronological events in the execution proceedings submitted by the learned counsel for judgment debtor No.1 for perusal of this Court would clearly gives rise to an inescapable inference that the judgment-debtor had no objection at all to the proclamation issued and the price of the bid, which was knocked down in favour of the auction purchaser. Thus, neither inadequacy of price of the properties put to sale nor any irregularity, much less, the material irregularity in execution proceedings, more particularly, in the proclamation, were raised in the events, have been narrated hereinbefore at the inceptive stage itself. Therefore, the decision in **Lal Chand**[1] also would not render any assistance to judgment debtor No.1.

29. Thus, I find no merit in the first and third submissions made by the learned counsel relating to non-adherence to the procedure in conducting auction and the so-called violation of Order - XXXIV Rule - 4 of CPC.

30. Turning to the second submission that the executing Court while disposing of the present E.A., did not properly comprehend the order passed by this Court in C.R.P. No.1379 of 2016 arising out of the order in E.A. No.212 of 2015, *ex facie,* there is no merit in the said submission, as already referred to in the above, in the context of principle of constructive *res-judicata.* Thus, there is no merit in the present revision petition, and, therefore, it is liable to be dismissed and is accordingly dismissed.

C.R.P. No.3668 of 2017:

31. This revision filed challenging the order in E.A. No.529 of 2017 relates to refusal to grant stay of execution proceedings under Order - XXI Rule - 26 read with Section 151 of CPC. Since C.R.P. No.3712 of 2017 itself is dismissed, the present Civil Revision Petition is liable to be dismissed and accordingly dismissed.

C.R.P. No.5127 of 2017:

32. This revision is filed challenging the order passed in E.A. No.84 of 2016, whereby and whereunder, while issuing fresh warrant of delivery of possession, police aid was also granted. It is clear from the order passed by the executing Court that there was strong resistance to execution. When once C.R.P. No.3712 of 2017 was dismissed, certainly, the present revision is also liable to be dismissed as the executing Court cannot go behind the decree. Hence, the present Civil Revision Petition is also dismissed.

33. In all the Civil Revision Petitions, the parties are directed to bear their own costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in all the present revision petitions stand dismissed.

A. SHANKAR NARAYANA, J

January 23, 2018.

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