

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP No.4516 of 2018

ORDER:

Heard Sri J.Ugra Narsimha, counsel for Revision Petitioner and Sri V.Srinivas, Counsel appearing for 2nd respondent.

2. This Civil Revision Petition is filed challenging the order dt.04.07.2018 in CMA.No.15 of 2014 of X Additional District Judge, Tirupathi confirming the order dt.03.01.2014 in EA.No.319 of 2006 in EP.No.21 of 2006 in O.S.No.533 of 1999 of the Principal Junior Civil Judge, Tirupathi.

3. Petitioner herein is the Judgment Debtor(J.Dr) in the suit.

4. 1st respondent filed the said suit for recovery of money against the petitioner and another and it was decreed on 11.08.2000.

5. Thereafter, EP was filed on 15.09.2000 for sale of the property of the petitioner and it was numbered as EP.No.665 of 2000 on the file of the Additional Junior Civil Judge, Tirupati.

6. On 22.02.2002 sale proclamation was directed to be issued by mentioning the Decree Holder(D.HR) value and the Amin value, since the petitioner did not give his valuation.

7. Subsequently, sale was held on 14.05.2004.
8. Thereafter, the EP was transferred to the Court of Principal Junior civil Judge, Tirupathi and renumbered as EP.No.21 of 2006.
9. Petitioner then filed EA.No.319 of 2006 under Order XXI Rule 90(2) CPC to set aside the said sale. However, the auction purchaser i.e., the 2nd respondent was not impleaded as a party therein.
10. Petitioner then filed an application to implead the auction purchaser which was rejected by the trial Court.
11. Assailing the said order, petitioner filed CRP.No.2425 of 2009.
12. Initially on 05.06.2009, in CRP.MP.No.3391 of 2009 in the said CRP, a direction was granted staying further proceedings in EP.No.21 of 2006 subject to the petitioner depositing Rs.40,000/- within two (02) weeks. Petitioner complied with the said order.
13. Ultimately, the said Revision was allowed on 10.02.2011 and the auction purchaser was directed to be impleaded in the EP.No.21 of 2006. However, the Court did not state anything about what is to happen to the deposit made by the petitioner pending said Revision.

14. Thereafter, on 03.01.2014, EA.No.319 of 2006 filed by the petitioner under Order XXI Rule 90 CPC was dismissed by the trial Court after recording evidence. It held, on appreciation of the record, that the EP schedule property had been attached on the date of the suit itself, that the attachment petition and notices were served on the petitioner, but he did not raise any objection with regard to the value of the property, whether it was consisting of ground floor, first floor or not; and that the D.HR had mentioned the value of the EP schedule property as Rs.1,00,000/- and at the time of attachment, the Amin assessed the value of the property at Rs.2,50,000/-, but the petitioner did not object to the same. It also took note of the fact that the petitioner got filed a claim petition through his daughters and delayed the sale proceedings. It rejected the petitioner's contention that the market value of the EP schedule property was Rs.11,00,000/- on the date of sale, on the ground that no evidence of market value was produced by the petitioner, and Ex.P2 Valuation Certificate issued by the Sub-Registrar on 09.08.2004 marked by the 1st respondent, showed that the Market Value was Rs.3,56,000/- and the property was sold at Rs.3,25,000/- on 14.05.2004 in favour of the 2nd respondent. It also relied on the judgment of the Supreme Court in **Sri Rama Maurya v. Kailash Nath and others**¹ and held that the petitioner failed to prove that substantial injury was caused to him due to

¹ AIR 2000 SC 3402

auction or that there was any material irregularity in conducting the auction or there was any fraud or misrepresentation.

15. Assailing the same, the petitioner had filed CMA No.15 of 2014 before the X Additional District Judge, Tirupati.

16. The said CMA was dismissed confirming the order of the trial Court dt.04.07.2018. It was held that though order XXI Rule 66 of CPC requires participation of the J.Dr in the settlement or finalization of sale proclamation, petitioner did not participate at the time of settlement of terms and did not furnish any value. It also held that under Order XXI Rule 90(3), application under sub-rule(1) of Order XXI Rule 90 CPC can be made only on such grounds, as were not available to the judgment debtor, when the property was brought to sale and it disables a judgment debtor from seeking relief of setting aside the sale on grounds which he could have raised before the sale but did not do so. It also considered the proviso (1) to Order XXI Rule 90 CPC which directed the Court to call upon the J.Dr. before admitting the Execution Petition, either to furnish security to the satisfaction of the Court for the amount equivalent to that mentioned in the sale, warrant or to that realized by the sale whichever is less, or to deposit such amount in the Court, and held that petitioner did not comply with the said proviso after filing of the application under Order XXI Rule 90 CPC.

17. Assailing the same, this Revision is filed.

18 Counsel for petitioner firstly contended that the J.Dr. valuation was not shown in the sale proclamation and only the Amin valuation and D.Hr valuation was shown.

However, this point does not appear to have been argued in the trial Court or in the first appellate Court and no plea was raised in the grounds of appeal in the CMA before the X Additional District Judge, Tirupati, that though petitioner raised the contention in regard to non-mention of his value in sale proclamation, the trial Court did not consider it. Without raising the said contention before the trial Court and arguing it and also not taking any plea about it before the first appellate Court, it is not open to the petitioner to raise such a contention for the first time in the Revision before this court.

Therefore, the lower appellate Court had rightly held that the petitioner was bound to take such objection before confirmation of sale and his failure to do so bars him from raising it at a later stage. It is not denied that the petitioner had opportunity to raise this objection before the sale was held. Therefore, he is precluded from raising such contentions now.

19. As regards the second contention of the petitioner that the market value of the property is Rs.11,00,000/- as on the

date of sale, no evidence has been adduced in that regard by the petitioner and so the said contention was rightly rejected by both the Courts.

20. Thirdly, counsel for petitioner contended that pending the CRP No.2425 of 2009 and in pursuant to the interim direction dt.05.06.2009 therein, petitioner had deposited Rs.40,000/- before the trial Court and that should be setoff against the EP debt and the sale should be cancelled.

This contention is equally without merit for the reason that when the Revision was disposed of on 10.02.2011, petitioner did not get any direction from the High Court to make such setoff. Once the revision was disposed of allowing the petitioner to implead the auction purchaser, the interim order passed in the Revision perishes with it and gets merged in the final order, and it has no independent existence thereafter.

Also, since the said deposit had not been made within 60 days of the date of sale under Order XXI Rule 89 CPC or immediately after sale in EP, as per first proviso to Order XXI Rule 90 CPC, the Courts below were right in not taking the same into consideration as a discharge of the decretal liability by the petitioner. However, it is open to the petitioner to apply to the Court below for refund of the same and take it back.

21. Counsel for petitioner lastly contended that the auction purchaser is none other than the tenant of the J.Dr., and that under Order XXI rule 72 CPC permission of the Court ought to have been taken before he was allowed to participate in the auction.

Order XXI Rule 72 CPC requires the D.Hr., to obtain permission from the Court if he intends to participate in the auction, but not a tenant of the J.Dr. Therefore, the said contention is also without any merit.

22. In this view of the matter, I see no merit in this Civil Revision Petition and it is accordingly dismissed at the admission stage. No order as to costs.

23. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.



M.S.RAMACHANDRA RAO, J

07th August, 2018.

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