

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.5640 of 2011**

**ORDER:**

The revision petitioner is the auction purchaser. Respondent No.1 herein is judgment debtor and respondent No.2 is the decree holder. The property for recovery of the E.P. amount of Rs.2,65,866/- brought to sale and the sale was conducted on 22.02.2010 and the revision petitioner became the highest bidder and he paid on that day 1/4<sup>th</sup> of the amount comes to Rs.1,95,000/- and the balance Rs.5,85,000/- within 15 days thereafter by 04.03.2010. While so, E.A.No.71 of 2010 in said E.P.No.21 of 2009 was filed by the J.Dr. on 17.03.2010 within 60 days from the date of sale supra. The auction purchaser was not made as party originally therein from perusal of the affidavit petition of the J.Dr. dated 05.03.2010 by referring that at the instance of elders he agreed to pay the entire decreetal amount in lump sum in full satisfaction of the execution petition and the case is coming for balance sale consideration to pay by auction purchaser by 05.03.2010 and in view of the settlement, the sale is to be set aside to safe guard his property. The executing Court on 05.10.2010 dismissed the application of the J.Dr. in E.A.No.71 of 2010 saying having gone through affidavit contents supra of the J.Dr. about the alleged settlement through elders from which he did not contest in the execution petition where there was sale held on 22.02.2010 that to be set aside, sale is over and auction purchaser paid the amount and the petitioner/J.Dr. has not impleaded the auction purchaser and the petition is bad for non-joinder of necessary party, thereby dismissed.

E.A.No.182 of 2010 was filed by the J.Dr. against the decree holder and the auction purchaser seeking review of the said order in E.A.No.71 of 2010 dated 05.10.2010 by permitting amendment as to the wrong mention of the provision and date of dismissal of the E.A.No.71 of 2010 supra. E.A.No.182 of 2010 averments of the J.Dr. are that he could secure funds of entire E.P. amount of Rs.2,65,866/-, poundage of Rs.23,445/- and 5% on the 1/4<sup>th</sup> sale amount deposit of Rs.9,500/- and same is mentioned with calculation in the lodgment schedule and the petition is filed within 60 days from date of auction and not aware of the fact of auction purchaser and particulars to implead and Court also not brought this to his notice in E.A.No.71 of 2010 to implead during its pendency and it is later he came to know of auction purchaser deposited sale consideration and the auction purchaser was also stated present while hearing E.A.No.71 of 2010 and was heard, but surprisingly E.A.No.71 of 2010 was dismissed and it requires reopening and review as decree holder also withdrawn the amount deposited by him i.e., J.Dr. by filing cheque petition. Said E.A.No.182 of 2010 for review filed on 19.10.2010 to set aside the order in E.A.No.71 of 2010 dated 05.10.2010, was allowed directing the J.Dr. to deposit 5% on total purchase amount by deducting 5% paid on 1/4<sup>th</sup> purchase amount so that to deposit said balance within one month from date of the order that is by 29.12.2011 to set aside the sale dated 22.02.2010. Against that order allowing E.A.No.182 of 2010 dated 30.11.2011, the present revision is filed. It appears a revision was filed against order in E.A.No.71 of 2010 and pending revision, the review application was filed and revision was dismissed.

The contentions in the grounds of present revision are that the impugned order of the lower Court dated 30.11.2011 in allowing E.A.No.182 of 2010 set aside the dismissal order in E.A.No.71 of 2010, by review of the same is contrary to law and vitiated by material irregularity in exercise of jurisdiction and granting time to J.Dr. to deposit 3/4<sup>th</sup> of 5% purchase amount within one month from the date of order by setting aside the sale is unsustainable for executing Court ought not entertained application under Order 21 Rule 89 CPC in E.A.No.71 of 2010 without J.Dr. depositing 5% of purchase amount and that too when no power to enlarge time and that enlargement without jurisdiction shall not thereby prejudice right of the auction purchaser and thereby liable to be set aside.

The learned counsel for the revision petitioner/auction purchaser supra reiterated the same. Whereas it is the submission of the learned counsel for the J.Dr./1<sup>st</sup> respondent to the revision by supporting the order of the lower Court, leave about the neutrality of the decree holder, who even received the amount deposited by the J.Dr. pursuant to the settlement outside the Court.

Heard both sides and perused the impugned order and other material on record.

Though review is not an appeal in disguise, there is no specific bar for review of an order in execution proceedings from the wording of Order 47 and Section 114 CPC leave about the inherent power otherwise if at all available to sub serve the ends of justice to review own order by the Court.

Coming to the important aspect for consideration in revision, earlier filing of a revision against the dismissal order in E.A.No.71 of 2010 is not a bar in filing application for review of the same, leave about even dismissal of the revision if any the review if otherwise maintainable is maintainable. As the review is mainly on the technicality to cover the lapses of non-impleadment of the auction purchaser, a technicality. Leave apart the affidavit in review application shows auction purchaser through advocate also participated in opposing the application in E.A.No.71 of 2010 when heard by the Court and Court otherwise should have been invoked Order 1 Rule 10 CPC for impleadment of the auction purchaser as a co-respondent. The scope of revision is the technicality on non-impleadment once dismissed nothing to interfere within the limited scope of sitting in revision thereby as referred supra is different to the scope of review to cure the technicality. In fact the auction purchaser has no inherent right unless the sale is confirmed and sale certificate is issued even from mere deposit of the balance 3/4<sup>th</sup> sale consideration within 15 days from the date of auction after 1/4<sup>th</sup> amount at the time of auction paid, but for the entitlement of 5% amount and even the counter filed by the auction purchaser in E.A.No.71 of 2010 categorically mentioned that he paid the entire bid amount within the statutory time of 15 days from date of auction and the sale is to be confirmed thereby and if the J.Dr. wants to set aside the sale he has to pay 5% of the bid amount to be paid to the auction purchaser and it is not paid fully and thereby E.A.No.71 of 2010 is liable to be dismissed. In fact the dismissal order of E.A.No.71 of 2010 is not on that ground, but on the ground of non-impleadment of the auction purchaser as

referred and discussed supra. What the auction purchaser in E.A.No.182 of 2010 contended is that E.P. amount of Rs.2,65,866/- and poundage of Rs.23,445/- paid by the J.Dr. with E.A.No.71 of 2010 filed and also paid Rs.9,500/- represents 5% on 1/4<sup>th</sup> sale amount but not on entire auction sale amount. The decree holder in opposing to it practically and what the auction purchaser entitled is only 5% on the bid amount since totally paid in the event of sale not confirmed and once amount is deposited in which it satisfies the amount he is entitled and if at all anything falls shortage after adjustment of poundage the amount payable to the decree holder that could be paid and thereby even any time extended by the Court in the review application in E.A.No.182 of 2010 there is nothing to interfere much less by sitting in revision that too when the sale conducted by the trial Court is against the mandate of Order 21 Rule 64 CPC of only to bring the property to the extent sufficient to satisfy the decree debt of Rs.2,65,866/- and not the entire property which goes to the root of the matter, thereby also and in these facts supra and from the limited scope of revision to this Court there is nothing to interfere.

Accordingly and in the result, the Civil Revision Petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

---

**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 20.02.2018  
ska