

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 4988 of 2018

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the unsuccessful petitioner/auction purchaser assailing the order, dated 03.08.2018, of the learned Principal Senior Civil Judge, Tirupati, passed in E.A.No.100 of 2018 in E.A.No.89 of 2017 in E.P.No.49 of 2010 in O.S.No.555 of 2007.

2. I have heard the submissions of Sri Vedula Srinivas, learned counsel appearing for the petitioner, and of Sri Maheswara Rao Kunchem, learned counsel appearing for the third respondent. I have perused the material record.

3. The petitioner herein is the auction purchaser; the first respondent is the decree holder; the second respondent is the judgment debtor; and, the third respondent is the claim petitioner.

4. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

“The third respondent-claim petitioner is the legally wedded wife of the second respondent - judgment debtor. She filed a Domestic Violence Case against the judgment debtor *vide* DVC No.2 of 2009 on the file of the learned II Additional Judicial Magistrate of First Class, Tirupati. The learned Magistrate passed an order, on 26.07.2011, granting protection and right of residence in her favour and against the

judgment debtor and restrained him from either dispossessing her from the subject property or disturbing her possession over the subject property and also from alienating or disposing of or renouncing his rights over the said property. Certain other reliefs were also granted to her (claim petitioner) and against the judgment debtor. Aggrieved thereof, the judgment debtor filed a Criminal Appeal, *vide* C.A.No.199 of 2011 and the same was disposed of on 21.08.2015. Aggrieved of the same, the judgment debtor filed Criminal Revision Case No.2168 of 2015 and the same is pending on the file of this Court. No stay orders are granted in his favour is one of the submissions. Meanwhile, in the Execution Petition filed by the first respondent-decree holder against the judgment debtor, the said property was indeed sold in the execution proceedings and the revision petitioner-auction purchaser purchased the same in the Court auction sale. The claim petitioner who is the wife of the judgment debtor while contending that the decree being executed is a collusive decree, filed the claim petition in E.A.No.89 of 2017 to declare her rights over the schedule property. She further contends that the property was collusively sold in the EP filed by the decree holder against the judgment debtor and was purchased by the auction purchaser. In the said claim petition she prayed to restore the possession of the petition schedule property to her. In the said claim petition (EA 89 of 2017) enquiry is in progress. The auction purchaser, who is the third respondent in the said claim petition, filed the present Application i.e., E.A.No.100 of 2018 to grant leave to file the following documents:

1. Statement of account issued by State Bank of India, Ramanujam Circle, Tirupati, in the name of the husband of the petitioner.
2. Statement copy of Mrs.Swetha D/o. Sulochana i.e., the petitioner issued by State Bank of India, Ramanujam Circle, Tirupati.
3. Statement of account copy in the name of the husband of the petitioner issued by Bank of India, Ramanujam Circle, Tirupati.
4. Receipt issued by the Municipal Corporation, Tirupati, in the name of the petitioner under receipt No.10221-04/2017-18.
5. Receipt issued by the Municipal Corporation, Tirupati, under Receipt No.10226 – 4/2017-18.
6. Receipt issued by Escorts Co.
7. Receipt issued by Royal Enfield Co.

The Executing Court dismissed the said EA of the auction purchaser. Hence, she filed the present revision.”

5. The case of the auction purchaser, in support of her request to grant leave to file the aforesaid documents, in brief is this: ‘She purchased the EP schedule property, on 19.06.2015, for Rs.18,50,000/-; the sale was confirmed in her favour, on 19.08.2015; and, a sale certificate was issued in her favour, on 28.09.2015. Her husband is an employee in Tirumala Tirupati Devasthanams, Tirupati (‘TTD’, for brevity) and he is getting a monthly salary of Rs.65,000/-. Her son is working in HPL, Chennai, as a Software Engineer and he is getting a salary of Rs.60,000/-. Her daughter and son-in-law are working at USA as Software Engineers. She is having a commercial complex situated on

Renigunta-Tirupati main road and is getting Rs.1,00,000/- per month as rents. The ground floor in the said complex was let out to two companies and they are paying Rs.20,000/- & Rs.30,000/- respectively per month. She is also getting rents from portions let out as residences to families. She pledged the jewels belonging to her, her daughter and her husband. Thus, she is having capacity to purchase the property in the Court auction sale and there was no necessity for her to collude with others. She originally intended to purchase the property for the benefit of her daughter, who was not in India at that time. Hence, she purchased the property in the Court auction sale. She intends to give the property to her daughter after clearing the litigations. For the said reasons, she did not give instructions to her husband to give the property details to TTD officials. After returning from USA, with the help of her daughter, she secured the aforesaid documents. Hence, to prove her case, she was advised to file the said documents. As the claim petition filed by the wife of the judgment debtor is at the stage of arguments, the present EA was filed for receiving the documents on file after granting necessary leave.'

6. The case of the third respondent, claim petitioner, in brief, is this: 'Recording of evidence in the claim petition is completed. The auction purchaser did not state in her evidence as to how she secured the sale consideration paid by her for purchasing the subject property. The said aspect shows collusion between her and the decree holder as well as the judgment debtor. To cover up the lapse, the present application is filed. She also did not depose about the rents being received from the

companies referred to by her in her affidavit. The averments that she intended to purchase the property for the benefit of her daughter and as such her husband did not inform the same to TTD is nothing but concocted story. The other averments that she pledged the jewels belonging to her, her daughter and her husband and that she has capacity to purchase the subject property in Court auction sale are false. The application is filed to cover up the points gained in the cross examination. The auction purchaser colluded with the decree holder and the judgment debtor to knock away the EP schedule property and also to overcome the residence orders passed in favour of the claim petitioner in the DV case filed by her against her husband/judgment debtor. The documents have no legal sanctity.'

7. Learned counsel appearing for the petitioner/auction purchaser having reiterated the pleaded case of the auction purchaser stated that the documents are copies of statements of accounts issued by the State Bank of India and Bank of India and receipts issued by the Municipal Corporation, Tirupati, and the companies, to which portions in the ground floor of the complex of the auction purchaser are let out; that the said documents are very important to substantiate the pleaded case of the auction purchaser, who purchased the schedule property in a Court auction sale for a valuable consideration and to show her *bona fides* in purchasing the subject property. He further submits that the Executing Court erroneously dismissed the EA filed to grant leave to file the documents on the ground that there was no pleading about these

documents in the counter filed by the auction purchaser, though it is well settled law that evidence need not be pleaded.

8. *Per contra*, learned counsel for the third respondent-claim petitioner submitted that the documents are being filed to cover up the points gained in the cross examination of the auction purchaser and that the auction purchaser did not mention about the documents in her deposition made on oath before the Court below and that the petition filed when the claim petition is at the stage of arguments is not *bona fide*.

9. I have given earnest consideration to the facts and submissions.

10. After the suit filed by the plaintiff – decree holder is decreed against the judgment debtor, the decree holder filed Execution Petition and brought the subject property of the judgment debtor to sale and the auction purchaser purchased the same in a Court auction sale for a valuable consideration. While so, the wife of the judgment debtor filed the claim petition based on an order passed in the aforesaid DVC case wherein she was granted right of residence over the subject property and her husband – judgment debtor was restrained from either dispossessing her from the subject property or disturbing her possession over the said property and was also restrained from alienating or disposing of or renouncing his rights over the said property. The order passed in the said DVC is a subject matter of Criminal Revision Case pending on the file of this Court. No stay orders are granted therein. The claim petitioner claims that she has a right of residence over the subject property and that her husband is restrained from alienating the subject

property in any manner and therefore, the subject property cannot be alienated or brought to sale and that the suit between the decree holder and the judgment debtor is a collusive suit and that the Court auction sale is a collusive sale and that the auction purchaser has no capacity to purchase the subject property. Now, the auction purchaser intends to file the petition listed documents to substantiate her case. Her submission is that the documents now being sought to be filed are vital documents to prove her case.

11. As per the settled law, the claim petition is to be disposed of by treating it as an original suit. The matter is still at the stage of arguments before the executing Court. All the documents except the two receipts are copies of bank statements issued by State Bank of India & Bank of India and receipts issued by Municipal Corporation. The other two receipts are said to have been issued by two companies, which are said to be the tenants in portions of a complex said to be belonging to the auction purchaser/the petitioner herein. Hence, this Court is of the considered view that the auction purchaser/3rd respondent in the claim petition shall be given a fair opportunity to file the documents to substantiate her case, more particularly when it appears that the documents may be relevant to decide the real issue in controversy. Further, a plausible explanation was offered for not filing the documents at an earlier stage of the matter. When the Court is of the considered view that if these documents are also permitted to be placed on record, the Court below would be in a better position to effectively adjudicate the *lis* and that such a course would sub-serve the ends of justice, the Court would receive the documents and would direct the Court below to consider their admissibility and probative value at a later stage. Further, as rightly

contended, when the property was purchased in a public auction held by a competent Court and the auction sale proceeds are deposited by the auction purchaser and when her capacity to purchase the said property was questioned by the third party, claim petitioner, who is no other than the wife of the judgment debtor, it is just and fair to afford an opportunity to the auction purchaser to substantiate her defence in the claim petition in all respects. Having regard to the peculiar facts and circumstances, this Court holds that the auction purchaser should be given sufficient opportunity to substantiate her defence including her capacity to purchase the property, which was sold in the Court auction sale in her favour and for which she was also issued a sale certificate by the Executing Court. In the well considered view of this Court, at the time of considering requests to grant necessary leave and receive documents on file, the Court will only consider the aspect of delay in filing the documents and the further short question as to whether or not any case is made out for granting leave; but, the Court will not consider the probative value of the documents filed along with the petition. It is settled law that if the documents are found to be relevant to decide the real issue in the controversy and when the Court feels that interests of justice require that the documents may be received, then the court would receive the documents by exercising the judicious discretion and would consider their effect thereafter at a later stage. When such is the settled position and, when the documents are being sought to be produced in the executing court, which is the first Court, normally they would be received and an opportunity would be given to prove them and also to adduce rebuttal evidence, if any; and their relevance and effect would be considered while deciding the issues raised and involved in the claim petition.

12. On the above analysis, this Court finds that the trial Court is not justified in refusing to receive the documents and in not granting leave by condoning the delay in filing the same. Viewed thus, this Court finds that the order of the Court below brooks interference.

13. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. As a consequence, E.A.No.100 of 2018 in E.A.No.89 of 2017 in E.P.No.49 of 2010 in O.S.No.555 of 2007 filed by the auction purchaser is allowed and leave is granted to her to file the petition listed documents. The said documents are accordingly received on file subject to proof, admissibility and relevancy.

No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

Date: 14.12.2018
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M. SEETHARAMA MURTI, J

