

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6173 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C., challenging the docket order dated 03.11.2017 passed in E.P.No.56 of 2011 in O.S.No.24 of 1998 on the file of the Additional Senior Civil Judge, Rajahmundry, wherein and whereunder the trial Court ordered issuance of warrant for proclamation of sale of E.P. schedule property.

2) The facts in issue are as under:

The respondent herein filed O.S.No.24 of 1998 on the file of the Additional Senior Civil Judge, Rajahmundry, for recovery of Rs.1,08,268/- with subsequent interest at 24% per annum. Vide judgment, dated 09.08.2004, the trial Court dismissed the said suit. Aggrieved by the same, the respondent herein preferred A.S.No.107 of 2004 before the VI Additional District Judge (Fast Track Court), East Godavari at Rajahmundry. By its judgment dated 31.01.2009, the lower appellate Court allowed the said appeal and decreed the suit, directing the petitioner herein to pay an amount of Rs.74,039/- with interest at 6% per annum from the date of suit till the date of realisation. Thereafter, the decree holder filed O.E.P.No.56 of 2011 seeking issuance of sale notice to the judgment debtor ie., petitioner herein under Order 21 Rule 64 and 66 of C.P.C., since the attachment of the said property was made vide I.A.No.1664 of 2004 and the same was made absolute. The

averments in the affidavit filed in support of the E.P., would show that along with the appeal, the respondent herein filed I.A.No.1664 of 2004 seeking attachment of the schedule property before judgment. The said I.A. was allowed and an attachment was ordered before judgment. It was also stated that the judgment debtor can discharge the decretal amount in one lumpsum. Hence seeking issuance of sale notice to the judgment debtor and to sell the schedule property in public auction if the judgment debtor fails to comply the orders of the Court.

3) A counter came to be filed by the judgment debtor stating that aggrieved by the judgment in A.S.No.107 of 2004, he filed Second Appeal No.46 of 2010 before this Court, which is still pending. According to him, he has got a fair chance of success in the second appeal and only to harass the judgment debtor, the decree holder filed the present E.P.

4) After considering the rival contentions, the trial Court ordered issuance of warrant of proclamation of sale. Assailing the same, the present revision is filed.

5) Learned counsel for the petitioner would submit that the Court below failed to give an opportunity to the petitioner to submit his estimation of the value of the property. He further submits that though the Field Assistant valued the schedule property at the time of issuance of test warrant at Rs.17.00 lakhs, but in the order, the valuation of the Field Assistant was shown at

Rs.5.00 lakhs. He further submits that as per second proviso to Order XXI Rule 66 of the C.P.C. the order itself is illegal.

6) Learned counsel for the respondent would submit that the order of the Court below is in conformity with Order XXI Rule 66 of the C.P.C. and warrants no interference.

7) In view of the rival submissions, it would be useful to refer to the provisions of Order XXI Rule 66 (1) and (2) of the C.P.C.

“66. Proclamation of sales by public auction:

(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree holder and the judgment debtor and shall state the time and place of sale, and specify as fairly and accurately as possible-

(a) the property to be sold, or, where a part of the property would be sufficient to satisfy the decree, such part;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government.

© any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property;

Provided that where notice of the date for settling the terms of the proclamation has been given to the

judgment debtor by means of an order under Rule 54, it shall not be necessary to give notice under this rule to the judgment debtor unless the Court otherwise directs;

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.”

8) It is to be noted that the suit is filed for recovery of money, which was decreed, directing the petitioner herein to pay Rs.74,039/- with interest @6%per annum from the date of suit till the date of realisation. For realisation of the decretal amount, the respondent herein filed E.P.No.56 of 2011.

9) It is clear from the second proviso to Order XXI, Rule 66 of the C.P.C., that the proclamation shall also include the estimation, if any, to be given by either or both of the parties. It is to be noted that when a proclamation is made, the Court shall make a mention of the valuation of the property as declared by the decree holder as well as the judgment debtor. A perusal of the docket order would show that the estimated value of the judgment debtor was not mentioned in the proclamation of sale. Had the proclamation of sale contained the valuation of the judgment debtor, it could have become the upset price being the highest, in which case, the property would fetch higher price. Therefore, I am of the opinion that non-mentioning of the estimated value of the judgment debtor in the proclamation of sale goes to the very root of the sale, which

ultimately vitiates the sale. Hence, the order impugned is liable to be set aside.

10) Accordingly, the order under revision is set aside and the matter is remanded back to the Court below with a direction to issue a fresh proclamation of sale in accordance with the provisions of law and after giving an opportunity to the judgment debtor. There shall be no order as to costs.

11) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

16.02.2018
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JUSTICE C. PRAVEEN KUMAR