

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.6490 of 2017**

**ORDER:**

This Civil Revision Petition is filed under Section 115 C.P.C. assailing the order dated 30.10.2017 passed in E.A.No.214 of 2016 in E.P.No.77 of 2011 in O.S.No.404 of 2009 on the file of the Court of the Principal Junior Civil Judge at Tadepalligudem.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the respondent filed O.S.No.404 of 2009 on the file of the Court of the Principal Junior Civil Judge at Tadepalligudem, against the petitioner for recovery of the suit amount. The trial Court decreed the suit in favour of the respondent and against the petitioner. The respondent filed E.P.No.77 of 2011 for realisation of the decretal amount. The respondent got attached the property of the petitioner. After following the due procedure, the Court conducted auction on 22.12.2014. The bid was knocked in favour of the respondent/deeree-holder. The Executing Court confirmed the sale on 30.03.2015. The Executing Court terminated the E.P. on 30.03.2015. After termination of the E.P., the petitioner/judgment-debtor filed an application under Order XXI Rule 85 C.P.C. and the same was allowed, setting aside the sale conducted on 30.03.2015. While things stood thus, the decree-holder filed E.A.No.214 of 2016 in E.P.No.77 of 2011 in O.S.No.404 of 2009 under Sections 144 and 151 C.P.C. The petitioner filed counter *inter alia* contending that the petition is not maintainable under law. The Executing Court, after affording a reasonable opportunity to both parties, allowed the petition. Hence, the revision.

4. The point that arises for consideration is:

*Whether there is any illegality, irregularity or impropriety in the order of the executing Court?*

5. In order to appreciate the rival contentions, it is not out of place to extract hereunder Rule 86 of Order XXI of CPC:

**Order XXI – Execution of Decrees and Orders**

**Rule 86. Procedure in default of payment:**– In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

6. A perusal of the above rule at a glance clearly indicates that the Executing Court while setting aside the sale, ought to have proceeded further in accordance with law. Instead of continuing the execution proceedings, the Executing Court inadvertently terminated the E.P., on 30.03.2015. If the E.P. is not reopened, it may not be possible for the decree-holder to realise the decretal amount. Even if the E.P. is restored, the Executing Court has to follow the procedure as contemplated from Rule 64 onwards of Order XXI CPC, before conducting the auction. The Executing Court, after taking into consideration the hardship likely to be caused to the parties to the proceedings, allowed the petition. Even if the petition is allowed, the same may not cause any prejudice to the petitioner, who is the judgment-debtor. If the petition is not allowed, it may not be possible for the respondent/decreet-holder to realise the decretal amount.

7. To substantiate the argument, learned counsel for the respondent has drawn the attention of this Court to **O.N.G.C. v. Association of Natural Gas Consuming Industries**<sup>1</sup>, wherein the Hon'ble Apex Court held that in view of the legal maxim "*actus curiae neminem gravabit*", which means that an act of Court shall prejudice no man ....

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the

considered view that the order passed by the executing Court is sustainable in law. Viewed from any angle, there is no illegality, irregularity or impropriety, in the order of the Executing Court warranting interference of this Court. Hence, the revision petition lacks merits and *bona fides*.

9. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

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**T.SUNIL CHOWDARY, J**

Date: 10.09.2018

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<sup>1</sup> AIR 2001 SC 2796