

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.471 of 2019

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the docket order dt.19-02-2019 by the Judge, Family Court-cum-VIII Additional District and Sessions Judge, Mahabubnagar returning the application filed under Order XXI Rule 106 C.P.C. filed by petitioner on the ground that petitioner should file counter-affidavit in the E.P. also to show his *bona fides*.

2. Learned counsel for petitioner contends that there is no such requirement in law and the Court below could not have insisted that petitioner should file counter in the E.P. which is not yet restored while presenting application under Order XXI Rule 106 C.P.C. (I.A. (SR) No.194 of 2019).

3. Learned counsel for respondents is unable to show any provision of law which mandates filing of counter before the E.P. is restored by the Executing court along with application under Order XXI Rule 106 C.P.C. filed by petitioner.

4. In my considered opinion, the Court below could not have insisted on petitioner to file counter-affidavit to E.P.No.216 of 2018 before the said E.P. is restored to its file, and when the question about the restoration of E.P. to its file is to be considered by it after entertaining I.A. (SR) No.194 of 2017 by it.

5. Therefore, the Civil Revision Petition is allowed, the objection raised by the Court below on 19-02-2019 for numbering I.A. (SR) No.194 of 2019 in E.P.No.216 of 2018 in O.S.No.58 of 2016 is rejected and the said Court is directed to entertain the said I.A. (SR), number it and then decide it in accordance with law within four (04) weeks from the date of receipt of copy of this order. No costs.

6. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-07-2019

Vsv

