IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

****

CIVIL REVISION PETITION Nos. 89 and 262 of 2026

1. CHINTHA CHANDRAN, , S/O. NARAYANA, AGED ABOUT 63 YEARS, RESIDING AT 25-2-229, 3RD CROSS ROAD, NEW MILITARY COLONY, NELLORE CITY, SPSR NELLORE DISTRICT -524001
2. CHINTHA VIJAYAKUMARI, W/O. CHANDRAN, AGED ABOUT 56 YEARS, HOUSEWIFE, RESIDING AT 25-2-229, 3RD CROSS ROAD, NEW MILITARY COLONY, NELLORE CITY, SPSR NELLORE DISTRICT- 524001

...PETITIONER(S)

Versus

SYED HAFEEZ, S/O. SYED KHADER BASHA, AGED ABOUT 54 YEARS, PRESENTLY RESIDING AT DOOR NO.23-1912, 2ND CROSS ROAD, RAMESH REDDY NAGAR, NELLORE CITY, SPSR NELLORE DISTRICT- 524001

..RESPONDENT

DATE OF ORDER PRONOUNCED : **07.10.2026**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No

3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

CIVIL REVISION PETITION Nos. 89 and 262 of 2026

% 07.10.2026

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..RESPONDENT

! Counsel for Petitioner : Sri O. Manohar Reddy, learned Senior Counsel assisted by Sri Anup Koushik Karavadi, learned counsel

^ Counsel for Respondents : Sri P.Veera Reddy, learned Senior Counsel assisted by Sri V.Siva Prasad Reddy, learned counsel

< Gist :

> Head Note :

? Cases referred :

1. AIR 1954 SC 349
2. (1996) 5 SCC 705
3. AIR 1962 AP 271
4. 2013(5) ALD 416
5. AIR 2023 SC 936

6. 2019(3) ALD 648
7. 2024 SCC OnLine AP 5762
8. AIR 1962 Pat 221
9. 2024 SCC OnLine SC 3372
10. 2019 SCC OnLine Mad 13105
11. AIR 1974 Ker 185 : 1974 SCC OnLine Ker 65
12. 2010 SCC OnLine AP 633 : (2010) 5 ALD 821 : (2010) 6 ALT 135
13. 2023 Supreme (Mad) 3327
14. 2025 SCC OnLine AP 5189
15. C.R.P.No.2058 of 2022 dated 31.01.2025 of High Court of A.P.
16. AIR 1961 Madras 407
17. AIR 1974 Madras 278
18. 1961 SCC OnLine AP 78
19. 2009 SCC OnLine AP 419=2009(5) ALD237
20. 2013 SCC OnLine AP 633
21. 2019 SCC OnLine AP 12
22. R.P.No. 78 of 1987 dt 12.01.2001
23. (1986) 1 SCC 615
24. AIR 1968 SC 372
25. 2014(4) ALD 618
26. AIR 1968 SC 372
27. (2010) 13 SCC 336
28. 2014(4) ALD 618
29. 2006(8) SCC 641
30. (2010) 9 SCC 496
31. (2010) 2 SCC 497
32. (2010) 3 SCC 732

This Court made the following:

Date of reserved for orders : 09.07.2026
Date of pronouncement : 07.10.2026
Date of uploading : .10.2026

APHC010016352026

IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI **[3331]**

(Special Original Jurisdiction)

WEDNESDAY, THE 7th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION NOs: 89 and 262 of 2026

Between:

1. CHINTHA CHANDRAN, , S/O. NARAYANA, AGED ABOUT 63 YEARS, RESIDING AT 25-2-229, 3RD CROSS ROAD, NEW MILITARY COLONY, NELLORE CITY, SPSR NELLORE DISTRICT -524001

2. CHINTHA VIJAYAKUMARI,, W/O. CHANDRAN, AGED ABOUT 56 YEARS, HOUSEWIFE, RESIDING AT 25-2-229, 3RD CROSS ROAD, NEW MILITARY COLONY, NELLORE CITY, SPSR NELLORE DISTRICT- 524001

...PETITIONER(S)

AND

1. SYED HAFEEZ, S/O. SYED KHADER BASHA, AGED ABOUT 54 YEARS, PRESENTLY RESIDING AT DOOR NO.23-1912, 2ND CROSS ROAD, RAMESH REDDY NAGAR, NELLORE CITY, SPSR NELLORE DISTRICT- 524001

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to set aside Order dated 06-01-2026 passed in EP.No.81 of 2024 in

OS.No.197 of 2018 on the file of the Principal District Judge, and consequentially declare the Auction Sale dated 05.11.2025 as Null and Void and to pass

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings pursuant to the impugned Order dated 06-01-2026 passed in EP.No.81 of 2024 in OS:No.197 of 2018 on the file of the Principal District Judge, Nellore, pending disposal of the above Civil Revision Petition, and to pass

IA NO: 2 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspended the impugned Order dated 06-01-2026 passed in EP.No.81 o12024 in OS.No.197 of 2018 on the file of the Principal District Judge, Nellore, pending disposal of the above Civil Revision Petition, and to pass

Counsel for the Petitioner(S):

1. ANUP KOUSHIK KARAVADI

Counsel for the Respondent:

1. SIVAPRASAD REDDY VENATI

CIVIL REVISION PETITION NO: 262/2026

Between:

1. CHINTHA CHANDRAN,, S/O. NARAYANA, AGED ABOUT 63 YEARS, RESIDING AT 25-2-229, 3RDCROSS ROAD, NEW MILITARY COLONY, NELLORE CITY, SPSR NELLORE DISTRICT -524001

2. CHINTHA VIJAYAKUMARI,, W/O. CHANDRAN, AGED ABOUT 56 YEARS, HOUSEWIFE, RESIDING AT 25-2-229, 3RD CROSS ROAD, NEW MILITARY COLONY, NELLORE CITY, SPSR NELLORE DISTRICT- 524001

...PETITIONER(S)

AND

1. SYED HAFEEZ, S/o. Syed Khader Basha, Aged about 54 years, Presently residing at Door No.23-1912, 2nd Cross Road, Ramesh Reddy Nagar, Nellore City, SPSR Nellore District-524001

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased to set aside Docket Order dated 27-11-2025 passed in EA.No.1564 of 2025 in EP.No.81 of 2024 in OS.No.197 of 2018 on the file of the Principal District Judge, Nellore, and to pass such

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to grant stay of all further proceedings pursuant to the impugned Docket Order dated 27-11-2025 passed in EA.No.1564 of 2025 in EP.No.81 of 2024 in OS.No.197 of 2018 on the file of the Principal District

Judge, Nellore, pending disposal of the above Civil Revision Petition, and to pass such

Counsel for the Petitioner(S):

1. ANUP KOUSHIK KARAVADI

Counsel for the Respondent:

1. SIVAPRASAD REDDY VENATI

The Court made the following:

COMMON ORDER

The judgment debtors filed the above revisions against the docket order dated 27.12.2025 in E.A.No.1564 of 2025 and the order dated 06.01.2026 in E.P.No.81 of 2024 in O.S.No.197 of 2018 on the file of the Principal District Judge, Nellore.

2. The decree holder, being the plaintiff, filed suit O.S.No.197 of 2018 against the defendants-judgment debtors, seeking specific performance of the agreement of sale or alternatively, for refund of sale consideration with interest. The suit was decreed by granting alternative relief directing the judgment debtors to pay advance amount of Rs.2,90,00,000/- with interest @12% per annum from the date of filing of the suit till the date of decree and thereafter @ 6% per annum from the date of decree till the date of realisation. Further, the defendants were directed to pay the suit costs of Rs.8,62,763/-.

3. The decree holder filed E.P.No.81 of 2024 under Order XXI Rules 54, 64 to 66 of CPC to attach and sell the E.P. schedule property. The decree holder filed E.P. seeking realisation of Rs. 4,90,97,099/-.

4. The judgment debtors filed a counter contending that pending the E.P., the judgment debtors made part payments, totalling Rs.2,40,00,000/-.

5. The E.P. schedule property was attached by following the procedure, and the auction was conducted on 05.11.2025. The decree holder, after obtaining permission, participated in the auction. The auction was knocked down in favour of the Decree holder for Rs.7,50,00,000/-. After deducting the part payments made, pending the E.P., and setting off the decretal amount with interest, the decree holder deposited Rs.4,77,21,551/-. The auction purchaser also deposited Rs.22,50,045/- on the date of auction towards poundage. The E.P is posted to 06.01.2026 for confirmation of sale.

6. However, the amount relating to stamp duty as per Order XXI Rule 85 CPC, as applicable to the State of Andhra Pradesh, was not deposited within 15 days from the date of auction. Thereafter, the auction purchaser filed E.A.No.1564 of 2025 under Section 151 CPC on 27.11.2025, seeking permission to deposit the stamp duty and registration charges. The Executing Court, by docket order, allowed the application on the same day. The docket order reads as follows:

"Heard and Allowed".

7. Thereafter, the sale was confirmed on 06.01.2026, and the Executing Court directed the office to take steps for issuance of a sale certificate to the auction purchaser.

8. Against the order dated 06.01.2026 in E.P.No.81 of 2024 in O.S.No.197 of 2018, the judgment debtors filed C.R.P.No.89 of 2026 on 08.01.2026. An

interim order was granted in C.R.P.No.89 of 2016 on 08.01.2026, and the same is being extended from time to time.

9. Against the docket order dated 27.12.2025 in E.A.No.1564 of 2025, the judgment debtors filed C.R.P.No.262 of 2026 on 29.01.2026.

10. Heard Sri O. Manohar Reddy, learned Senior Counsel assisted by Sri Anup Koushik Karavadi, learned counsel for the petitioner and Sri P.Veera Reddy, learned Senior Counsel assisted by Sri V.Siva Prasad Reddy, learned counsel for the respondent.

11. Sri O. Manohar Reddy, learned Senior Counsel for the petitioners-judgment debtors, would submit that failure to deposit the stamp duty along with purchase money vitiated the auction. E.A.No.1564 of 2025 filed under Section 151 CPC on 27.11.2025 by the auction purchaser was allowed on the same day, without ordering notice to the judgment debtor. The Executing Court had not assigned any reasons. The Executing Court has no jurisdiction to entertain E.A.No.1564 of 2025. The sale conducted on 05.11.2025 became null and void in the eye of the law and re-sale should have been conducted in terms of Order XXI Rule 86.

12. Learned Senior Counsel for the petitioners-judgment debtors relied on the following judgments:

a) **Manilal Mohanlal Shah Vs. Sardar Sayed Ahmed[1].**
b) **Balram Vs. Ilam Singh[2].**
c) **Mudragada Suryanarayanamurti Vs. Southern Agencies, Rajahmundry and another[3].**

[1] AIR 1954 SC 349
[2] (1996) 5 SCC 705

d) **K.Vijaya Anand Vs Smt Y.Suvarna**[4]
e) **Gas Point Petroleum India Limited Vs Rajendra Marothi and Others**[5]
f) **G.Venkata Ramana Naidu Vs K.Venkataramana Reddy**[6]

13. *Per contra*, Sri P.Veera Reddy, learned Senior Counsel for the respondent-decree holder, would submit that non-deposit of stamp duty within 15 days does not vitiate the sale. It is a bona fide mistake and not a material irregularity. The Executing Court got jurisdiction under Section 151 CPC and hence, allowed the application. No notice is required to be ordered. The defect is curable, and the deposit of stamp duty is directory and not mandatory.

14. Learned Senior Counsel for the respondent-decree holder relied on the following decisions:

a) **Kurmadasu Apparao Vs. Ganapathi Ammarajamma and others**[7]**.**
b) **Harnandan Singh Vs. Aditya Narain Singh and others**[8]**.**
c) **State of Punjab and another Vs. Ferrous Alloy Forgings P Ltd and others**[9]**.**
d) **Govindan Vs. Nagendran and another**[10]**.**
e) **Mathai Varkey and another Vs. Varughese Chacko**[11]**.**
f) **G.Venkata Reddy Vs. B.Venkata Reddy and another**[12]**.**
g) **C.Muthammal and ors. Vs. R.Kannan and ors**[13]**.**

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[3] AIR 1962 AP 271
[4] 2013(5) ALD 416
[5] AIR 2023 SC 936
[6] 2019(3) ALD 648
[7] 2024 SCC OnLine AP 5762
[8] AIR 1962 Pat 221
[9] 2024 SCC OnLine SC 3372
[10] 2019 SCC OnLine Mad 13105
[11] AIR 1974 Ker 185 : 1974 SCC OnLine Ker 65
[12] 2010 SCC OnLine AP 633 : (2010) 5 ALD 821 : (2010) 6 ALT 135

h) Kemburu Appalanaidu Vs. Vavilapalli Ramakrishna and another[14].

i) Dega Sujathamma Vs. Kekeyi Jyothamma[15].

15. **The points for consideration are:**

1. Whether the Executing Court got jurisdiction to extend time to deposit the balance sale price including the stamp duty, beyond the period prescribed under Order XXI Rule 85 C.P.C., on an application filed by the auction purchaser under Section 151 C.P.C.?
2. Whether non-deposit of the entire purchase money and the general stamp amount, for issuance of sale certificate, would by itself vitiate the sale or the judgment debtor is required to file a separate application?
3. Whether the Executing Court, without issuing notice to the judgment debtor, can order the application filed under Section 151 C.P.C. seeking extension of time?
4. Whether the confirmation of sale by the Executing Court, in the facts of the case, is legally sustainable?

16. The facts narrated supra require no reiteration. The auction was conducted on 05.11.2025. The auction purchaser deposited the amount after set-off on the date of auction, including the poundage. However, the amount of general stamp was not deposited within the stipulated time. E.A.No. 1564 of 2025, under Section 151, seeking an extension, was filed on 27.11.2025.

17. Let this Court deal with the scope of Order XXI Rules 85 to 87 C.P.C., as applicable to the State of Andhra Pradesh.

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[13] 2023 Supreme (Mad) 3327
[14] 2025 SCC OnLine AP 5189
[15] C.R.P.No.2058 of 2022 dated 31.01.2025 of High Court of A.P.

18. It is pertinent to extract the Central provision in Order XXI Rules 85 & 86, as under:

> ***Rule 85 - Time for payment in full of purchase money***
>
> The full amount of purchase money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property :
>
> Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.
>
> ***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 re-sold, 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.

19. A comparative table relating to the State-wise amendment of Rule 85 is made available hereunder, for better appreciation of the provisions.

State	Date w.e.f.	Amendment added to the Rule
Madras	25.11.1944	"85. Time for payment in full of purchase-money and of stamp certificate of sale. — The full amount of purchase money payable **and the general stamp for the certificate under rule 94** or the amount required for such stamp, shall be

		deposited into Court by the purchaser before the Court closes on the fifteenth day from the sale of the property: Provided that in calculating the amount of purchase-money to be so deposited the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72."
Andhra Pradesh	Same as in Madras	Same as in Madras
Kerala	01.01.1966	"In Order XXI, in rule 85 — (i) after the words 'purchase-money payable', insert the words 'together with the amount required for the general stamp paper for the certificate under rule 94'; (ii) in the proviso, for the words 'in calculating the amount to be so paid into Court', substitute the words 'in respect of the purchase-money'."
Consequential amendment – Rule 87		
Madras	28.10.1936	In Order XXI, in rule 87, for the words "payment of the purchase-money" substitute the words "the payment of the amounts mentioned in rule 85".
Andhra Pradesh	Same as in Madras	Same as in Madras
Kerala	Same as in Madras	Same as in Madras

20. Thus, a bare perusal of Rule 85 of Order XXI mandates '**full amount of purchase money payable and general stamp'** for certificate under Rule 94 or the amount required for such stamp shall be deposited into the Court by the auction purchaser before the court closes on the 15th day from the sale of the

property and the consequence of the failure to deposit was envisaged under Rule 86. In the Central Act, the words '**and the general stamp for certificate under Rule 94 or the amount required for such stamps,'** were not made available. The respective High Courts amended the Rule and incorporated those words.

21. Rule 86 of Order XXI envisages that in default of payment within the period mentioned in Rule 85, 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 re-sold 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.

22. If Rule 85 of Order XXI reads in isolation, it can be interpreted that the words 'shall' used in the order can be interchanged as 'may' in a given situation. However, if Rules 85 and 86 are read in juxtaposition, and Rule 86 provides for consequences of the failure to deposit the full amount of purchase money and the general stamp for issuance of the certificate under Rule 94, there is no scope for interpreting the word 'shall' as 'may'. When a statute prescribes a consequence for non-compliance, that provision should be undeniably mandatory. Thus, the principle called the doctrine of **'consequence prescribed**' would apply in that scenario.

23. The Hon'ble Apex Court in **Sharif-Ud-Din v. Abdul Gani Lone**[16], observed as follows at para 9:

> "9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding

[16] (1980) 1 SCC 403

which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word “shall” while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.”

(Emphasis is mine)

24. It is also pertinent to note that Rule 85 of Order XXI CPC employs the conjunction “and”, between the words ‘full amount of purchase money payable—general stamp for the certificate under Rule 94’ necessitating the auction-purchaser to deposit the balance of the purchase money together with the amount required for the stamp duty for the certificate under Rule 94, within the stipulated period of fifteen days. But for the words ‘general stamp’ employed in the Rule by way of the State amendment, normally after the sale was confirmed, then the stamp and registration charges would arise at Rule 94 stage. However, in view of the amendment, the deposit of general stamp or the money along with the full purchase money shall be treated as mandatory but not directory.

25. The Hon’ble Apex Court, in the recent judgment of **Gopal Krishan vs Daulat Ram**,[17] while examining the scope of Section 63(c) of the Indian Succession Act, 1925, reiterated the settled law of statutory interpretation that one should not read “and” as “or”, or vice-versa, unless obliged to do so by discernible legislative intent.

> “21. In the considered view of this Court, the learned Single Judge fell in error in arriving at such a finding for the words used in the section, which already stands extracted earlier, read — “or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a…”. That being the case, there is no reason why the “or” employed therein, should be read as “and”. <u>After all, it is well-settled that one should not read “and” as “or” or vice-versa unless one is obliged to do so by discernible legislative intent. Justice G.P. Singh’s treatise, Principles of Statutory Interpretation tells us that the word “or” is</u>

[17] (2025) 2 SCC 804

> normally disjunctive while the word "and" is normally conjunctive. Further, it is equally well-settled as a proposition of law that the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. None of these requirements, to read a word is which is normally disjunctive, as conjunctive herein, are present."
>
> *(Emphasis is mine)*

26. Let this Court examine precedential jurisprudence concerning Order XXI Rule 85 as applicable to the State of Andhra Pradesh. Some of the judgments which held that deposit of purchase money and general stamp under Order XXI Rule 85 is mandatory are mentioned herein.

27. In **Thayyan Padayaghi and another v. Veluswami and another**[18], a learned single judge of the Madras High Court considered the scope of Order XXI Rules 85 and 86 and observed as follows:

> "2. It seems to me that order, 21, Rule 86 is quite clear on the point. It states that in default of payment within the period mentioned in Order, 21, Rule 85, the court may, if it thinks fit, forfeit the deposit less the expenses of sale, to the Government, and the rule proceeds to lay down that the property shall thereafter be re-sold 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. This rule does not authorise the court to grant any extension of time for the payment of the balance of the purchase price. The only discretion that is available to the Court under this rule relates to the extent to which it is called upon to deal with the 25 per cent, of the purchase price which had been deposited under Rule 84. Insofar as that

[18] AIR 1961 Madras 407

is concerned, the court may order its forfeiture after deducting the expenses of the sale."

28. In **Subbammal v. P. Gurusamy Thevar and others**[19], another learned single judge of the Madras High Court observed that Rules 84 to 86 are mandatory and the court has no jurisdiction to extend time.

29. The Division Bench of the composite High Court in **Mudragada Suryanarayanamurti v. Southern Agencies, Rajahmundry and another**[20], held that deposit of the full amount of the purchase money or the full amount required for stamp duty, for certificate under Rule 94 is mandatory. The failure to deposit the amount vitiates the sale, and the **sale itself gets nullified**. The sale completely wipes out as if it did not exist in the eye of the law.

30. In **Mudragada Suryanarayanamurti's** case, wherein the auction purchaser had deposited the 25% amount under Rule 84 and had also deposited a sum towards the general stamp for the sale certificate under Rule 94 within the period of 15 days prescribed under Rule 85; however, the amount deposited towards stamp duty fell short by Rs.9/-, the correct stamp duty payable being Rs.45/- as against Rs.36/- deposited, and the deficit of Rs.9/- was made good only on 08.10.1957, beyond the period of 15 days from the date of sale. The Division Bench, after extracting Rules 84, 85, 86 and 87, as amended and applicable to the State of Andhra Pradesh, held that the language of Rules 84, 85 and 86 is mandatory, and that no distinction can be drawn between the payment of the full amount of the purchase money and the payment of the full amount required for the general stamp for the certificate; in

[19] AIR 1974 Madras 278
[20] 1961 SCC OnLine AP 78

default of the payment of either amount in full within the prescribed period, the property has to be re-sold under Rule 86.

31. The Division Bench further held that the “payment” contemplated under Rule 86 is not confined to the payment of the purchase money alone, but extends equally to the amount required for the general stamp for the certificate under Rule 94, and that this position is made clear by Rule 87, as amended, which refers to default of payment of the “amounts mentioned in Rule 85”, thereby making it explicit that default in either component triggers a mandatory re-sale. The Division Bench also held, following the judgment of the Hon’ble Supreme Court in **Manilal Mohanlal Shah** *(supra)*, that unless the deposit and payment are made as required by the mandatory provisions of the rules, there is no sale in the eye of law in favour of the defaulting purchaser, and no right to own or possess the property accrues to him; non-payment renders the sale proceedings a complete nullity, and the fact that the Court is bound to re-sell the property in the event of default shows that the previous sale proceedings are completely wiped out as if they never existed in the eye of law.

32. The Division Bench rejected the contention that Rule 86 was not correspondingly amended to include stamp duty, holding that the “payment” contemplated by Rule 86 is the payment of the amounts mentioned in Rule 85, and no distinction can be drawn between the two components. It was accordingly held that the Court had no jurisdiction to extend the time prescribed under Rule 85, either for the purchase money or for the stamp duty amount, and that the sale in that case was a “complete nullity” and “completely wiped out as if it did not exist in the eye of law.” The Division Bench also held that the Executing Court had no jurisdiction to direct the

judgment debtor to furnish security for the sale warrant amount in an application filed under Rule 86, since such an order could be made only in an application filed under Rule 90.

33. A learned Judge in **Dasarla Koteswaramma v. Alla Venkayamma**[21], reiterated the same observation at paras 9 and 10:

> "9. From this, it is clear that not only the balance of sale consideration but also the amount required for general stamp for the certificate under Rule 94 or the amount required for such stamp shall be deposited before the expiry of 15th day. Admittedly that amount was not deposited before the stipulated time. When the petitioner wanted enlargement of the time, the trial court dismissed the E.A.
>
> 10. The failure to deposit the amount under Rule 85 of Order 21 CPC, automatically entails in cancellation of the sale and Rule 86 mandates that the resale of the property shall be conducted. There would not be any necessity to pass separate order setting aside the sale on account of failure of the bidder to deposit the amount. Sensing that his failure to deposit the cost of stamps results in cancellation of the sale or setting aside of the sale in his favour, the petitioner filed E.A. No. 734 of 2005 for review. Though the prayer in the EA is vague, it is obviously to review of the order in E.A. No. 1205 of 2005."

34. Another learned single Judge of the composite High Court in **K. Vijay Anand v. Y. Suvarna and others**[22], considered the scope as to whether there is any conflict between the State amendment and the Central Provision and

[21] 2009 SCC OnLine AP 419=2009(5) ALD237
[22] 2013 SCC OnLine AP 633

eventually concluded that there is conflict and further observed as follows at paras 30 and 31:

> "30. In the present case, to repeat, as fixation of rates of stamp duty is within the domain of the State Legislature/ State Government, it can be said that Rule 85 was amended in the State of A.P. only to comply with the said law relating to levy of stamp duty and it can be said to have imposed only an additional requirement of deposit of stamp duty charges in compliance with the said law... It therefore can be said that there is no conflict between the local amendment and Rule 85 even after the commencement of the Central Amendment Act.
>
> 31. It may also be noted here that in three other decisions of this court viz., Kudiyala Rama v VattikollaSomaraju, 2003 (2) ALD 93, DasarlaKoteswaramma v Alla Venkayamma, 2009 (5) ALD 237 and V.VedandaVysulu (died) per LRs v K.Purushotham, 2011 (2) ALD 616 the compliance with the local amendment has been held to be mandatory... Thus it follows that the local amendment made to Rule 85 has to be held to be valid and it does not stand overruled by the Central Amendment Act."

35. Another learned Single Judge of this High Court, in **G. Venkata Ramana Naidu Vs. K.Venkataranama Reddy**[23] held as under at para 11:

> **"**11. The tone and terrorem of Order, 21, Rules 84 and 85 and particularly Rule 86 of Code of Civil Procedure, is such that they are mandatory in nature and therefore the default committed by the auction purchaser cannot be excused and set at right by the Court by exercising its power under Section 148 or Section 151 of Code of Civil Procedure."

[23] 2019 SCC OnLine AP 12

36. However, in **G. Venkata Reddy's** case, the judgment debtor therein filed an application under Order XXI Rule 90 C.P.C. to set aside the sale on the ground that the auction purchaser has not deposited the entire amount including the stamp duty within fifteen days as mandated under Order XXI Rule 85. The learned Single Judge of the composite High Court relied upon the judgment of the Kerala High Court in Kunhambu Vs Geetha[24] and the decision of the Hon'ble Apex Court reported in **Ganpat Gin v. Second Additional District Judge**[25], and observed that deposit of stamp duty is after conducting of the sale and failure to deposit stamp amount does not constitute material irregularity in concluding the same. Accordingly, the learned Single Judge allowed the civil revision petition.

37. The learned Single Judge in **G. Venkata Reddy's** case observed that the requirement of depositing stamp duty under Rule 85 is distinct in character from the deposit of the balance sale consideration, and is merely a fiscal measure intended to secure payment of stamp duty to the State exchequer. Default in depositing the stamp duty amount was treated as a mere irregularity falling within the scope of Rule 90, rather than a mandatory pre-condition going to the root of the sale under Rule 85.

38. It is pertinent to note here that in an identical issue, the Apex Court, in **Balram's case** (referred supra), after considering the decision reported in **Manilal Mohanlal Shah's case** (referred supra) held as under at para No.7:

> "It is to be noted that the argument that it is only a material irregularity in the sale to attract Rule 90 instead of Rule 85 was expressly rejected; and it was clearly held that Rule 85 being mandatory,

[24] R.P.No. 78 of 1987 dt 12.01.2001
[25] (1986) 1 SCC 615

> its non-compliance renders the sale proceedings a complete nullity requiring the executing court to proceed under Rule 86 and property has to be resold unless the judgment debtor satisfies the decree by making the payment before the resale. The argument that the executing court has inherent power to extend time on the ground of its own mistake was also expressly rejected. In our opinion the contentions of the learned counsel for the appellant are fully negatived by this decision of the Court."

The ratio in **Balaram's** case was not brought to the notice of the learned single Judge in **Venkata Reddy's** case, though the issue was settled much earlier.

39. In **Appala Naidu's case,** the learned Single Judge of this Court relied upon **G. Venkat Reddy's case** (referred to supra).

40. In **Dega Sujathamma's case, the** learned Single Judge of this Court applied the doctrine of '*Maxim actus curie neminem gravabit'* and held that the petitioner therein could not deposit a meagre amount in relation to the sale price within the time for no fault of her and eventually allowed the civil revision petition.

41. In **Appa Rao's case,** the revision arose out of a suit for partition, and the auction purchaser could not deposit the entire amount. In that view of the matter, the learned Single Judge, by applying the Maxim '*De Minimis Non Curat Lex'* which means *"*the law does not concern itself with trifles", allowed the revision.

42. It is significant to note that in **Kurmadasu Apparao's case, G. Venkata Reddy's case, K. Appala Naidu's case, Santosh Kumar Sony's case,**

Kemburu Appalanaidu's case and **Dega Sujathamma's case**, relied upon by the learned Senior Counsel for the respondent, the binding ratio of the Division Bench of the composite High Court in **Mudragada Suryanarayanamurti** *(supra)* was neither brought to the notice of the learned Single Judges, nor was the same considered or distinguished.

LAW OF PRECEDENTS

43. A decision of a bench of greater strength is binding on a bench of lesser strength. This rule is based on judicial discipline, precedent and uniformity. It is a settled principle that a subsequent decision of a co-ordinate or smaller Bench, rendered in ignorance of a binding decision of a larger Bench, cannot be treated as good law to the extent of the inconsistency, and does not have the effect of diluting or overriding the earlier binding precedent. This is a matter of considerable significance, since a decision rendered without reference to a binding precedent directly on the point cannot be treated as having authoritative value.

44. This principle of institutional continuity and judicial discipline has received consistent approval from the Apex Court. In **Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel**,[26] wherein the Apex Court firmly ruled that a single Judge of a High Court is bound by the decisions of another single Judge and of Division Benches of the same Court as well as those of its predecessor Court recognised as binding. The relevant paragraphs 8 & 11 are reproduced as under:

> "8. The observations made by the learned Judge subvert the accepted notions about the force or precedents in our system of judicial

[26] AIR 1968 SC 372

administration. Precedents which enunciate rules of law form the foundation of administration of justice under our system. It has been held time and again that a Single Judge of a High Court is ordinarily bound to accept as correct judgments of courts of coordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of this Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law.

11. The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai case [3 Guj LR 529] and of Macleod, C.J., in Haridas case [23 Bom LR 802] did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. **Gajendragadkar, C.J., observed in Lala Shri Bhagwan v. Shri Ram Chand [(1965) 3 SCR 218] .**

> “It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the

> question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

Therefore, the law laid down in **Mudragada Suryanarayana Murti's case,** is binding on this Court.

45. When the Division Bench of this Court in **Mudragada Suryanarayana Murti's case,** considered the scope of Order XXI Rule 85 and held that the amount of purchase money including the deposit of stamp duty is mandatory, the said ratio binds the Single Judges, unless it is set aside by a larger Bench or the Hon'ble Apex Court.

46. Further, the requirement of deposit of stamp duty under Rule 85 is inextricably linked to the issuance of the sale certificate under Rule 94, which is the document that vests title in the auction purchaser. The stamp duty deposit, therefore, is not a fiscal obligation owed to the State dehors the sale, but an integral step in the completion of the sale process itself.

47. In **Vardhineedi Narasimha Rao Vs Gadiraju Bapiraju,**[27] a learned single judge of the composite High Court allowed a review filed by the Judgement debtor in connection with an issue under Order XXI Rule 85 CPC and observed as follows:

> "11. At the cost of repetition, this Court may point out that Sri P.V.Rama Sharma, the learned counsel for the respondent, does not dispute the fact that there was no amendment to Order XXI Rule 85 CPC, as assumed by Kerala High Court in Kunhambu Vs. Geetha (2-supra), this Court in G.Venkat Reddy (3-supra) and Bathula Lakshmi Rajeswara Rao

[27] 2014(4) ALD 618

(1-supra). Thus, all the three judgments have proceeded on an erroneous premise that the Amendment Act 104 of 1976 has amended Order XXI Rule 85 CPC and that as a consequence of the said amendment, there is no requirement for deposit of stamps within the stipulated time unlike the payment of full purchase money. The order under review was passed solely based upon the said erroneous judgments. Thus, there cannot be a better case containing error apparent on the face of the record inasmuch as the order under review was decided based on wrong judgments."

48. In **K. Vivekanandan's case**, the Madras High Court considered the issue arising out of the suit for partition and held that Order XXI C.P.C. is not mandatory while affecting the sale under the Partition Act and the requirement is that the provisions of C.P.C. have to be followed only as far as it is practicable. Learned Single Judge, held as under at paras 18, 19 and 20.

"18. Perusal of decisions relied on the side of the revision petitioner would go to show that with regard to auction sale following the procedure under Order 21 C.P.C. is not mandatory while effecting the sale under the Partition Act. The requirement is that the provisions of C.P.C. have to be followed only as far as practicable. It means that those provisions have to be followed only as guidelines and that it is not mandatory. Therefore, all the decisions relied on by the learned counsel for the first respondent under which the following provisions of Order 21 Rules 84, 85 and 86 and apart from Rule 66 are said to be mandatory, will not apply to the sale effected under the partition Act.

19. It is not the case of the respondent that there was a fraud and collusion in effecting the sale. The auction sale was conducted after adequate notice to both parties and also after effecting publicity in well

known newspapers. It is not a case where the amount of purchase money is not paid at all, but, paid to the Commissioner, who is a person appointed by the Court. The non-deposit of general stamps for certificate by the auction purchaser is not out of the mistake committed by the auction purchaser, but, out of mistake committed by the Commissioner in not giving such a direction to the auction purchaser to deposit the same.

20. Even assuming that it is a mistake of the auction purchaser, even then, as the provisions of Order 21 Rule 85 are not mandatory, in so far as sale under partition Act is concerned, the sale cannot be set aside on that ground alone. Therefore, the setting aside of the sale by the Court below is unjustified and therefore, it is liable to be set aside."

49. Applying this ratio to the facts of the present case, the non-deposit of the stamp duty within 15 days from the date of sale, i.e., by 20.11.2025, results in the sale dated 05.11.2025 as a nullity. Once the sale is rendered nullity by operation of law, the Executing Court had no other option but to proceed with re-sale of the property under Rule 86. The Executing Court had no jurisdiction whatsoever, by invoking Section 151 C.P.C., to permit the decree holder to deposit the stamp duty and registration charges beyond the said period. The ratio laid down by the Division Bench in **Mudragada's** case would apply to facts on all fours with the present case, that the Court had no jurisdiction to extend the time prescribed under Rule 85 either for the purchase money or for the stamp duty amount.

50. Thus, as seen from the precedential jurisprudence vis-à-vis Order XXI Rules 85 and 86, this Court holds that deposit of the total purchase money and the general stamp duty is mandatory but not directory. The failure of such

deposit vitiates the sale without reference to any application by the judgment debtor.

51. Here it is also appropriate to extract Rule 87 C.P.C., which envisages notification on re-sale. The words ‘payment of amount ' were substituted with the words ‘on payment of amount mentioned in Rule 85 '.

> **87. Notification on re-sale -** Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

52. The word ‘payment’ was substituted with the words ‘payment of amount’ mentioned in Rule 85 C.P.C.

53. While Rules 84 to 87 of Order XXI envisage sale; Rules 89 and 90 prescribe a procedure to set aside the sale on deposit, irregularity or fraud. After conducting the sale, the Legislature, in its wisdom, provided 60 days to the Court to confirm the sale. Either the judgment debtor or the person interested can make an application under Rule 89(1) within the time stipulated. Whereas Rule 90 speaks about a situation regarding material irregularity. Though Rules 84 to 90 postulate sale, deposit and to set aside the sale; Rules 84 to 87 are governing one category and 89 and 90 are the other category.

54. In the case at hand, the decree holder filed E.A.No.1456 of 2025 under Section 151 C.P.C. on 27.11.2025 to permit him to deposit stamp duty and registration charges and pleaded bona fide mistake and a material irregularity.

55. Curiously, the Executing Court, without ordering notice to the judgment debtor, allowed the application in two words ‘Heard and allowed’. No reason was assigned by the Executing Court as to whether the non-deposit of the stamp duty and registration charges is bona fide or due to ignorance as pleaded by the decree holder.

PROMINENCE OF REASONS

56. It is a settled principle of law that reasoning is the heartbeat of every judicial order. The judicial or quasi-judicial authority shall consider the contentions of the parties. If the authority does not accept, there should be a finding to that effect. The reasons recorded by the authority disclose the mental process by which the decision has been reached and demonstrate that the matter has received due and thoughtful consideration. The reasons assure the parties that their submissions have been considered and promote transparency in the administration of justice.

57. The person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of being heard. The order so passed by the presiding officer should give reason for arriving at any conclusion showing proper application of mind.

58. Violation of either of them, in the given facts and circumstances of the case, vitiates the order itself. A reasoned order is vital for ensuring genuine justice and fostering public trust. This adherence to natural justice standards prevents arbitrary decisions. Such accountability ensures transparency and comprehension of the rationale underlying the verdict. A well-structured

reasoned order contains key components: summarised facts, presented evidence, applicable legal framework, reasoning process and final decision.

59. The reasons further facilitate appellate or supervisory review courts in understanding the order. Reasons serve as a safeguard against arbitrariness by ensuring that conclusions are grounded in legal principles and evidence rather than mere subjective opinion. Therefore, recording of clear, cogent reasons is an indispensable component of the rule of law. While deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation of the court to record reasons while disposing of the case. The requirement of indicating reasons has been judicially recognised and imperative.

See: **Sant Lal Gupta v. Modern Coop. Housing Group Society Ltd[28], Sugaram v State of Rajasthan[29], Karanthi Associates Pvt. Ltd. Vs Masood Ahmed Khan[30]**; **G. Vallikumari Vs. Andhra Education Society and others[31], Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and others[32]**

60. Thus, in the considered opinion of this Court, the order of the trial court dated 27.11.2025 in E.A.No. 1456 of 2025 brooks interference. If the order is allowed to be continued, it will amount to a miscarriage of justice. No separate application is needed by the judgment debtor seeking to set aside the sale.

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[28] (2010) 13 SCC 336
[29] 2006(8) SCC 641
[30] (2010) 9 SCC 496
[31] (2010) 2 SCC 497
[32] (2010) 3 SCC 732

When the sale itself is vitiated, confirmation of sale does not arise. This court is conscious that the law is hard, but it is the law. '*Dura Lex, sed lex*'.

61. Given the discussion supra, the docket order dated 27.12.2025 in E.A.No.1564 of 2025 in E.P.No.81 of 2024 in O.S.No.197 of 2018 is hereby set aside. The order dated 06.01.2026 in E.P.No.81 of 2024 in O.S.No.197 of 2018, on the file of the Principal District Judge, Nellore, is set aside.

62. At this stage, the judgment debtor agreed to pay Rs.2,95,00,000/- towards full and final settlement, apart from the amount already paid to the decree holder/auction purchaser. The decree holder/auction purchaser agreed to the same. Thereafter, the Judgment Debtor credited the amount, agreed upon in two spells, to the bank account of the decree holder/auction purchaser. Learned counsel appearing for the decree holder/auction purchaser confirmed the same. Hence, this court recorded full satisfaction in E.P.No.81 of 2024 in O.S.No.197 of 2018, on the file of the Principal District Judge, Nellore. By a separate order, this court permitted the decree holder/auction purchaser to withdraw the amount deposited to the credit of E.P., except the poundage.

63. Accordingly, the Civil Revision Petitions are disposed of. No costs.

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

JUSTICE SUBBA REDDY SATTI

Dated: 07.10.2026

Note: LR copy marked
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