

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition No.5451 of 2018

ORDER:

This revision, under Section 115 CPC, is preferred against the order, dated 10.04.2018, passed in E.P.No.160 of 2011 in O.S.No.189 of 2009 on the file of the Court of Principal Junior Civil Judge, Markapur, terminating the execution petition by recording full satisfaction and directing issuance of challan for Rs.56,100/- towards NJ stamps.

2. Heard *Sri Sadu Rajeswara Reddy*, learned counsel appearing for the revision petitioner. Though the 1st respondent/DHr has entered appearance, there is no representation. The 2nd respondent has been impleaded *vide* orders, dated 04.10.2018, of this Court passed in I.A.No.3 of 2018. Though notice was served on the 2nd respondent/auction purchaser, who was subsequently impleaded, no appearance has been made.

3. The suit is filed by the 1st respondent/Decree Holder/plaintiff for realization of Rs.77,172.60 paise basing on a registered mortgage deed, dated 22.05.2006, borrowing an amount of Rs.50,000/- repayable with interest @ 18% per annum and for suit costs. Though the defendant has initially made appearance through a counsel, the suit was decreed *ex parte*, on 15.09.2009, for a sum of Rs.77,172.60 paise with subsequent interest @ 12% per annum

on Rs.50,000/- from the date of suit till the date of decree and with further interest @ 6% per annum thereon granting three months time for redemption.

(b) The plaintiff filed E.P.No.160 of 2011 for realization of the decreed amount by putting the following schedule of property of Ac.5.00 cents of land for sale, as per Order XXI Rule 64 to 66 CPC for realization of Rs.90,024/- with further interest as per the decree and EP costs.

SCHEDULE

Prakasam District Registration– Markapur Sub-Registration
District – land situated at Chintakunta village of an extent of
Ac.5.00 out of Ac.6.92 cents in S.No.115 bounded by

East	:	Sk. Abdul Rahman's land
South	:	Sirasaganundla Narayana's land
West	:	Land of Mandati Tirupathi Reddy
North	:	Land of Mandati Anantaiah"

(c) The defendant/JDr filed counter opposing the execution proceedings stating that he is a Telugu Lecturer in S.V.K.P College, Markapur, and drawing a salary of Rs.70,000/- per month and the DHr is also a retired lecturer in Physics in the same college and that the DHr wantonly filed this execution petition for sale of the EP schedule property to harass the respondent to bring down his reputation in the eye of the public and his colleagues and further expressing willingness to pay Rs.10,000/- per month to discharge the decretal debt commencing from 05th January, 2016.

(d) The revision petitioner/JDr filed a copy of the part-satisfaction memo, dated 14.10.2016, filed by the counsel for the DHR acknowledging receipt of Rs.10,000/-.

(e) Thereafter, the JDr did not fully satisfy the decree and allowed the sale to be proceeded with. Initially, the petition schedule property was put to sale through public auction and the 2nd respondent herein, by name, Yamanuri Sambasiva Rao, was the highest bidder for Rs.9,35,000/- in the sale held on 09.02.2018. The auction purchaser deposited 1/4th of the sale amount on the same day and an amount of Rs.28,095/- was collected towards poundage out of the 1/4th sale consideration of Rs.2,33,750/- The balance 3/4th of the sale proceeds for an amount of Rs.7,01,250/- was deposited by the auction purchaser on 23.02.2018. The JDr did not file any petition to set aside the same nor was there any order of stay for confirmation of sale, as per the observations of the execution Court in the order impugned in the revision. Hence, the execution Court confirmed the sale, recorded full satisfaction and terminated the execution petition; *vide* its order, dated 10.04.2018, which is impugned in this revision. The execution Court further directed issuance of challan for producing NJ stamps.

4. Without challenging the sale before the execution Court, the revision petitioner/JDr filed this petition mainly contending that the EP schedule property values more than Rs.1 crore, but the same

was put to sale in auction for Rs.9,35,000/- only and that since the revision petitioner is a lecturer drawing salary of Rs.70,000/- per month, the execution Court erred in passing the impugned order by not granting time to pay Rs.10,000/- per month.

5. Learned counsel for the revision petitioner submitted that since the execution Court did not permit deposit of the balance amount due, the same could not be deposited earlier, but recently, the revision petitioner deposited certain amounts totaling to Rs.1,51,136/- as per the calculation memo filed by the revision petitioner, which is as shown below:

	15.09.2009		89375
1	15.09.2009 to 14.09.2010	6%	5059/-
2	15.09.2011 to 14.09.2012	6%	5059/-
3	15.09.2012 to 14.09.2013	6%	5059/-
4	15.09.2013 to 14.09.2014	6%	5059/-
5	15.09.2014 to 14.09.2015	6%	5059/-
6	15.09.2015 to 14.09.2016	6%	5059/-
7	15.09.2016 to 14.09.2017	6%	5059/-
8	15.09.2017 to 14.09.2018	6%	5059/-
9	15.09.2018 to 14.09.2019	6%	5059/-
10	15.09.2019 to 14.09.2020	6%	5059/-
11	15.09.2020 to 14.09.2021	6%	5059/-
12	15.09.2021 to 14.09.2022	6%	5059/-
13	15.09.2022 to 30.11.2022		844/-
			1,50,927/-

It is further stated in the calculation memo as follows:

“..the petitioner paid Rs.10,000/- on 14.10.2016, Rs.30,000/- on 24.10.2018, Rs.50,000 on 17.11.2022 and Rs.61,136/- on 22.11.2022. Total amount paid Rs.1,51,136/- and as per the said calculation upto 30.11.2022 and thus the petitioner paid

extra amount of Rs.209/- and thus petitioner herein filed C.R.P.No.5451 of 2018 and JDr in E.P.No.160 of 2011 in O.S.No.189 of 2009 dated 15.09.2009, i.e., date of decree satisfied the total decretal amount of Rs.1,51,136/- as on 30.11.2022 and excess of Rs.209/- paid by the petitioner.”

According to him, the amount due is Rs.1,50,927/- as shown in the memo, dated 05.12.2022 noted above. The calculation does not appear to be correct. However, it appears that the amount deposited is a little more than what is due.

6. Instead of challenging the sale before the execution Court on the grounds that far excess property than required to satisfy the decree was put to sale, that too, for a far less value than its original value; the revision petitioner filed this revision petition. Order XXI Rule 64 CPC reads as hereunder:

“64. Power to order property attached to be sold and proceeds to be paid to person entitled - Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.”

A plain reading of the above provision indicates that Order XXI Rule 64 CPC mandates an execution Court to sell such portion of property as may be seem necessary to satisfy the decree.

7. At this juncture, it is apt to refer to the decision of the apex Court in **Ambati Narasayya vs. M. Subba Rao and Ors.**¹, wherein at paragraph No.7, it was held as follows:

"7. It is of importance to note from this provision that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, in our opinion, is not just a discretion, but an obligation imposed on the Court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction.

8. The suit schedule property is a land of five acres. Selling the same for a value of Rs.9,50,000/- during the year 2018 by which period the value could never be such low, *ex facie* appears to be shockingly disproportionate to the value of the property. Furthermore, the amount paid to DHr after the sale is Rs.1,12,499/-. Therefore, a portion of schedule property would have been sufficient to discharge the whole decretal debt. Without

¹ 1989 Supp.(2) SCC 693

examining whether a part of the petition schedule property can be sold for realization of the decretal debt, or recording reasons for putting the whole property to sale, the execution Court has committed a grave error by not following the dicta in Order XXI Rule 64 CPC.

9. Since the decree has been satisfied, the 1st respondent/DHr has not appeared before this Court. Though notice was served on the 2nd respondent/auction purchaser, no appearance has been made before this Court.

10. On 04.10.2018, *vide* orders in I.A.No.2 of 2018, interim stay of all further execution proceedings in E.P.No.160 of 2011 was granted on the condition that the petitioner shall deposit Rs.30,000/- to the credit of E.P.No.160 of 2011 within four weeks from the date of receipt of a copy of the said order. In compliance thereof, the said amount was deposited and the same was reported to this Court on 26.10.2018.

11. When this Court recently directed the execution Court to submit status report, through letter Dis.No.414, dated 09.12.2022, Court informed the termination of the execution proceedings as per the docket order, dated 18.08.2018, after issuance of cheque for Rs.1,12,499/- to DHr in pursuance of orders in E.A.No.256 of 2018 towards full satisfaction of the EP amount, after confirmation of sale

on 10.04.2018 and ordering issuance of challan for Rs.56,100/- towards N.J stamps. Thus, it seems that by virtue of interim order of stay, no further proceedings have taken place after 18.08.2018 for issue of sale certificate and delivery of possession of the EP schedule property. After payment of the amount due under the decree to the DHr as aforesaid, the balance amount of sale consideration deposited by the auction purchaser must be still in deposit before the execution Court.

12. As per Section 115 CPC, the High Court can exercise revisional jurisdiction and make such order as it thinks fit, if it appears that the Court subordinate to the High Court has exercised jurisdiction not vested in it by law or failed to exercise a jurisdiction so vested or acted in exercise of its jurisdiction illegally or with material irregularity. The proviso to Section 115 CPC stipulates that the High Court shall not pass an order under this Section except where the order impugned would have finally disposed of the suit or other proceeding. The expression 'finally disposed' is used in the sense of disposing a matter finally concluding the rights of the parties in relation to the proceedings concerned.

13. Since in the present case, the sale has been confirmed against the mandatory provision of Order XXI Rule 64 CPC by putting the whole property shown in the petition schedule for sale as detailed above and that too for a very meager amount, the execution Court

has passed an order which revisable under Section 115 CPC. Thus, the impugned order is liable to be set aside. To show the *bona fides* of the revision petitioner/JDr, a total amount of Rs.1,50,927/- was deposited. The said amount can be probably sufficient to meet the amount due under the decree even by now. However, even if some little more amount is needed, for any other purpose, the same also can be easily realized by the petitioner who undertook during the course of arguments to pay the same, in case, found due and directed by the execution Court. As such, the impugned order is liable to be set aside.

14. Accordingly, the Civil Revision Petition is allowed, setting aside the order, dated 10.04.2018, of the Principal Junior Civil Judge, Markapur, passed in E.P.No.160 of 2011 in O.S.No.189 of 2009. Consequently, all necessary steps shall be taken by the executing Court.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

20-12-2022
RAR

B. S. BHANUMATHI, J