

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

CIVIL REVISION PETITION Nos.4112 & 4118 of 2011

-

COMMON ORDER:

Since these two Civil Revision Petitions arose out of the same proceedings, they are taken up together for hearing and disposed of by this common order.

The first respondent-Bank filed O.S.No.82 of 1995 on the file of the Senior Civil Judge, Gudivada for recovery of an amount of Rs.4,62,469.50 ps and for other consequential reliefs on the foot of an equitable mortgage executed by respondent Nos.2 to 5-judgment debtors on 08.01.1995. The said suit was decreed *ex parte* and a preliminary decree was passed on 24.04.1996. Subsequently, a final decree was also passed on 31.08.2000. On the decree holder filing E.P.No.39 of 2002 for realisation of the decretal amount on sale of the mortgaged property, the property was put to auction, in which the petitioner purchased the same. A sale certificate was issued in favour of the petitioner-auction purchaser on 31.08.2005 and delivery of the property was also affected on 17.07.2006. Later, the third defendant, who is the second respondent herein, filed I.A.Nos.1390 of 2006 and 1391 of 2006 to set aside the final decree. The second respondent herein also filed I.A.No.1392 of 2006 seeking stay of execution of the decree pending disposal of I.A.Nos.1390 and 1391 of 2006. On dismissal of I.A.Nos.1390 and 1391 of 2006 for default, I.A.Nos.127 of 2010 and 128 of 2010 were filed to condone the delay of 92 days in filing the petitions under Order 9 Rule 9 C.P.C and to restore I.A.Nos.1390 and 1391 of 2006 respectively. The lower Court, on allowing I.A.No.130 of 2010 condoning the delay of 92 days, by docket order dated 17.08.2011 allowed I.A.No.127 of 2010 restoring I.A.No.1390 of 2006 to decide the same on merits

by providing an opportunity to the third defendant, on condition that he gets ready for enquiry in I.A.No.1390 of 2006 on 09.09.2011. Similarly, I.A.No.128 of 2010 was also allowed condoning the delay of 92 days in filing the petition to restore I.A.No.1391 of 2006 subject to condition that the third defendant should get ready for enquiry in I.A.No.1391 of 2006 on 09.09.2011. Hence, these revision petitions.

Learned counsel for the petitioner contends that no reasons were assigned by the Court below in condoning the delay and restoring I.A.Nos.1390 and 1391 of 2006; that final decree was passed on 31.08.2000 and sale certificate was issued in favour of the petitioner-auction purchaser on 31.08.2005, and to set aside the said final decree, both the I.As were filed in 2006 i.e., six years after passing of the final decree, and therefore, unless the delay in filing I.A.Nos.1390 and 1391 of 2006 is condoned, the said I.As ought not to have been numbered; that no enquiry is called for in I.A.Nos.1390 and 1391 of 2006 and that the Court below committed irregularity in entertaining I.A.Nos.127 and 128 of 2010, and therefore, restoration of I.A.Nos.1390 and 1391 of 2006 for hearing does not arise.

Admittedly, rightly or wrongly I.A.Nos.1390 and 1391 of 2006 were numbered, in which notices was ordered to the decree holder as well as the auction purchaser. Whether such I.As, which are filed belatedly, can be entertained without condoning the delay or not can be decided only when the same were taken up for hearing. Suffice it to say that on dismissal of I.A.Nos.1390 and 1391 of 2006 for default, the impugned I.As i.e., I.A.Nos.127 and 128 of 2010 were filed for condoning the delay in filing the restoration petitions. The lower Court having satisfied with the reasons explained for the delay, allowed the impugned I.As and restored I.A.Nos.1390 and 1391 of 2006. At the restoration stage,

the lower Court cannot go into the question as to whether the said I.As are maintainable or not and that can be decided only when the same would be taken up for hearing. In view of the same, the impugned orders do not suffer from any manifest illegality warranting interference by this Court.

The Civil Revision Petitions are accordingly dismissed.
There shall be no order as to costs.

A. GOPAL REDDY, J

Date: 30.09.2011

va