

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO.857 OF 2023

ORDER:

The present Revision Petition is filed by the petitioner aggrieved by the docket Order dated 23.12.2022 passed in E.A.No.4 of 2021 in E.P.No.9 of 2016 in O.S.No.67 of 2012 on the file of the learned Senior Civil Judge, Parchur, Prakasam District

2. The petitioner herein is the 1st Judgement Debtor (JDr), the 1st Respondent herein is the Decree Holder and the 2nd respondent herein is the 2nd Judgment Debtor in E.P.No.9 of 2016 in O.S.No.67 of 2012.

In the said Suit, the petitioner/1st Judgment Debtor was set *ex parte*. In order to execute the said Decree E.P.No.9 of 2016 has been filed by the Decree Holder. After filing E.P., the petitioner herein/1st Judgment Debtor filed an Application vide I.A.No.457 of 2016 under Section 5 of the Limitation Act in the said Suit, seeking to condone the delay of 737 days in filing the petition under Order 9 Rule 13 of the Code of Civil Procedure to set aside the *ex parte* decree dated 16.04.2014. Pending such Application, the petitioner herein also filed the present E.A.No.4 of 2021 in E.P.No.9 of 2016 under Order 21, Rule 26, praying the Court below to stay all further proceedings in E.P.No.9 of 2016, including sale of the subject property, till disposal of

I.A.No.457 of 2016. The said Application was dismissed by the Court below vide docket order dated 23.12.2022, holding that I.A.No.457 of 2016 is also dismissed for default, as such, the very purpose of the present Application is no way helpful to the case of the petitioner. Aggrieved, thereby the present Revision is filed.

3. Heard Sri Naga Praveen Vankayalapati, learned counsel for the petitioner.

4. Learned Counsel for the petitioner, in elaboration to what has been raised in the grounds contended that, the Application i.e. I.A.No.457 of 2016, filed under Section 5 of the Limitation Act to condone the delay in filing the petition to set-aside the *ex parte* decree was dismissed for non-prosecution and immediately steps have been taken to restore the same by filing appropriate Application and in the meantime, the present E.A.No.4 of 2021 has been dismissed. As such, the present Revision has been filed praying to pass appropriate orders.

5. On a perusal of the record, it is seen that the present Application has been filed to stay all further proceedings in the E.P., including sale, till disposal of I.A.No.457 of 2016. However, the said I.A. itself was dismissed for non-prosecution and thereby the very basis

of the prayer is not available to the petitioner. Therefore, this Court is of the view that the Court below has rightly dismissed E.A.4 of 2021.

6. In view of the foregoing observations and taking the submissions of the learned counsel for the petitioner into consideration, this Court does not find any illegality or impropriety in the impugned order and further no valid grounds are raised or urged by the petitioner warranting interference of this Court.

Accordingly, the Revision Petition is **dismissed**.

However, the petitioner is at liberty to move fresh Application, if he succeeds in the steps taken by him to restore I.A.No.457 of 2016 to the file of the Court below.

There shall be no order as to costs.

Miscellaneous Applications, pending if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

29th March, 2023.

GBS/DSB