

HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 3062 OF 2015

Between:

1. BYRAPURAM ABDUL SAMAD, KURNOOL DIST S/o. Byrapuram Abdul Hamid,
R/o. Nandikotkur Town & Mandal
Kurnool District.

...PETITIONER(S)

AND:

1. PINJARI CHAND BASHA, KURNOOL DIST & 2 OTHERS 'S/o. Pinjari Shalimiah,
R/o. Nandikotkur Town & Mandal,
Kurnool District.
2. Shiram Transport Finance Ltd, Kurnool (Financer)
3. Hinduja Laylond Finance Ltd., Kurnool, (Financer)
(R3 is not necessary party in this CRP)

...RESPONDENTS

Counsel for the Petitioner(s): B MOHAN VIJAYA KUMAR

Counsel for the Respondents: MAHESWARA RAO KUNCHEAM

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.3062 OF 2015

Between:

Byrapuram Abdul Samad, S/o. Byrapuram Abdul Hamid, 60 years, Muslim, Business, R/o.Nandikotkur Town and Mandal, Kurnool District, Andhra Pradesh.

... Petitioner/Decree-holder

Versus

1. Pinjari Chand Basha, S/o. Pinjari Shalimiah, Muslim, 50 years, Business, H.No.22/263B, Valmiki Nagar, R/o.Nandikotkur Town and Mandal, Kurnool District. (Judgment-debtor)
 2. Shriram Transport Finance Limited, Kurnool. (Financier)
 3. Hinduja Laylond Finance Limited, Kurnool (Financier)
- (R.3 is not necessary party in this CRP)

...Respondents

* * * * *

DATE OF ORDER PRONOUNCED : 26.04.2023.

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

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

B.V.L.N.CHAKRAVARTHI, J

*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.3062 OF 2015

% 26.04.2023

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2. Shriram Transport Finance Limited, Kurnool. (Financier)
3. Hinduja Laylond Finance Limited, Kurnool (Financier)

(R.3 is not necessary party in this CRP)

...Respondents

**! Counsel for the Revision
-petitioner**

: Sri B.Mohan Vijayakumar

**^ Counsel for the
Respondent No.1/
Judgment-debtor**

: Sri Maheswara Rao Kunchem

**^ Counsel for the
Respondent No.2**

: Sri B.Laxman
Sri Y.Ramatirtha

**^ Counsel for the
Respondent No.3**

: Proforma Party (R.3 is not
necessary party in this CRP)

< Gist:

> Head Note:

? Cases referred:

1. AIR 1958 Supreme Court 394 (V 45 C 61).

This Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI

CIVIL REVISION PETITION NO.3062 of 2015

ORDER:

This revision-petition is directed against the Order, dated 20.04.2015 in E.P.No.81 of 2014 in O.S.No.46 of 2014 on the file of Senior Civil Judge's Court, Nandikotkur, whereunder the Execution Court raised attachment over item No.1 of E.P., schedule and directed to hand over the said property to the Finance Company, which is having Hypothecation Agreement in its favour for the said property i.e., vehicle bearing No.AP21 TW 6275 (Mahindra Bolero Camper SC XL F vehicle), purchased by the respondent No.1/judgment-debtor under Hypothecation Agreement with the respondent No.2/Finance Company.

2. For the sake of convenience, the parties are referred to as they were arrayed in the execution petition proceedings.

3. The execution petition was filed by the decree-holder under Order XXI Rule 66 and 77 of the Code of Civil Procedure, 1908 (for brevity 'CPC') for sale of two (02) motor vehicles shown in E.P., schedule as item No.1 and item No.2, respectively, for recovery of decree amount due from the judgment-debtor. The learned Execution Court, after hearing both sides and

considering their respective contentions, passed the impugned Order, partly allowing the execution petition for sale of item No.2 property only and simultaneously raised the attachment over item No.1 motor vehicle and released the property to the respondent No.2 i.e., Finance Company, which is having hypothecation agreement with the judgment-debtor for the said vehicle.

4. The learned counsel for the revision-petitioner/decreed-holder would submit that the decree-holder filed the execution petition against judgment-debtor/respondent No.1 only under Order XXI Rule 66 and 77 of CPC for the sale of two (02) motor vehicles i.e., item No.1 and Item No.2 of the E.P., schedule and the Execution Court during the proceedings of the execution petition *suo motu* impleaded the respondent Nos.2 and 3 as parties to the execution proceedings on the ground that the 'Registration Certificate' (RC) book of the said vehicles are having an endorsement of the Transport Authority, showing as hypothecated to respondent No.2 and whereas, RC of item No.2 vehicle contains an endorsement as hypothecated to respondent No.3. though the said respondents did not file any application under Order XXI Rule 58 of CPC for raising the attachment

claiming the vehicles, later, passed the impugned Order raising the attachment against the item No.1 of the E.P., schedule and released the vehicle in favour of respondent No.2, while allowing the execution petition against item No.2 of the E.P., schedule for sale. He would further submit that the impugned Order is illegal and the Execution Court *suo motu* cannot implead the respondent Nos.2 and 3 as parties to the execution proceedings and raise the attachment releasing the item No.1 vehicle to the respondent No.2.

5. The learned counsel for the respondent No.2/Finance Company would submit that the Order of the Trial Court is not suffered with any illegality or irregularity and the Execution Court can implead any party to the proceedings for just decision in a case and the Execution Court can implead the parties using its inherent powers for just decision of the case. He would further submit that the revision-petitioner/deGREE-holder did not challenge the earlier order of the Execution Court impleading the respondent Nos.2 and 3 as parties to the execution proceedings and therefore, now he cannot challenge the same while questioning the impugned Order, dated 20.04.2015.

6. In the light of above rival contentions, the point that would arise in the revision-petition is as under: -

“Whether the Execution Court committed any material irregularity in the Order, dated 20.04.2015 passed in E.P.No.81 of 2014 in O.S.No.46 of 2014?”

7. **P O I N T:** -

It is an admitted fact that the revision-petitioner/deeree-holder obtained a decree against the respondent No.1/judgment-debtor for recovery of amount and he filed the execution petition *vide* E.P.No.81 of 2014 on the file of Senior Civil Judge’s Court, Nandikotkur under Order XXI Rule 66 and 77 of CPC for sale of two (02) motor vehicles i.e., item Nos.1 and 2 of the E.P., schedule for realization of decree amount. It appears that the learned Execution Court in the earlier, basing on the RC Book relating to said two (02) motor vehicles found that those vehicles were hypothecated to respondent Nos.2 and 3 Companies, respectively by the judgment-debtor and therefore, impleaded respondent Nos.2 and 3 as parties to the execution proceedings and ordered notice to them. The revision petitioner did not challenge the said order.

8. In pursuance of the notice received from the Execution Court, the respondent No.2 appeared before the Execution Court and filed counter contending that the judgment-debtor has taken a loan for a sum of Rs.4,78,000/- for purchasing item No.1 motor vehicle and executed Hypothecation Agreement on 30.10.2012 and Agreement value is for Rs.6,38,821/- and subsequently, he paid only Rs.2,41,300/- as on 27.06.2014 and later, committed default and he did not repay the loan amount and therefore, as per the terms of the Hypothecation Agreement, the company is entitled to take possession of the vehicle and sell the same by following due process of law and therefore, the judgment-debtor has no right to alienate the said vehicle pending hypothecation and hence, the said property cannot be sold in the execution petition.

9. The respondent No.3 did not appear before the Execution Court and contest the matter.

10. The learned Execution Court considering the rival contentions, passed the impugned Order, dated 20.04.2015 raising the attachment against item No.1 motor vehicle and ordered for sale of item No.2 of the motor vehicle of the E.P., schedule.

11. It is an admitted fact that during enquiry before the Execution Court, the respondent No.2 filed certain documents relating to item No.1 motor vehicle. Ex.B.2 is the Registration Certificate of the motor vehicle bearing No. AP21 TW 6275, which contains the endorsement of the Transport Authority that the vehicle was hypothecated to the respondent No.2/Finance Company. The respondent No.2 company also filed Ex.B.5 original Loan-cum-Hypothecation Agreement executed by judgment-debtor for purchasing the said vehicle. It is pertinent to note here that the respondent No.1 did not contest the claim of the respondent No.2/Finance Company on the ground that he discharged the loan amount payable to the respondent No.2/Finance Company under the Hypothecation Agreement.

12. As per Section 2 (30) of the Motor Vehicles Act, 1988, a person in whose name a motor vehicle stands registered would be treated as an owner. Where a motor vehicle is subject to an agreement of hire-purchase, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under the agreement, is treated as owner.

13. Section 51 (1) (3) and (4) of the Motor Vehicles Act, 1988 is relevant for the present case, which enacts Special provisions

regarding motor vehicle subject to hire-purchase agreement,
which is as follows:

(1) Where an application for registration of a motor vehicle which is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2)

(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the 1 [last registering authority] on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe 2 [and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority].

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement.

14. The evidence considered by the Execution Court makes it clear that the vehicle remained in the name of judgment-debtor but an entry as hypothecated to respondent No.2 was there on the Registration Certificate.

15. Rule 61 of the Central Motor Vehicle Rules, 1989 deals with 'Termination of hire-purchase agreements.' It enacts as under:

(1) An application for making an entry of termination of agreement of hire purchase, lease or hypothecation referred to in sub-section (3) of Section 51 shall be made in Form 35 duly signed by the registered owner of the vehicle and the financier, and shall be accompanied by the certificate of registration and the appropriate fee as specified in Rule 81.

(2) The application for the issue of a fresh certificate of registration under sub-section (5) of Section 51 shall be made in Form 36 and shall be accompanied by a fee as specified in rule 81.

(3) Where the registered owner has refused to deliver the certificate of registration to the financier or has absconded then the registering authority shall issue a notice to the registered owner of the vehicle in Form 37."

16. Admittedly, the hypothecation entry in favour of the 2nd respondent in the Registration Certificate of the vehicle was not cancelled by the Transport authorities as per the procedure laid down under law as stated above. In those circumstances, as rightly held by the learned Execution Court, the said vehicle cannot be sold in the execution proceedings. Therefore, there is no irregularity in the finding of the learned Execution Court on this aspect.

17. Coming to the contention of the learned counsel for revision-petitioner that the Execution Court has no authority to implead the respondent Nos.2 and 3 as parties to the execution proceedings, without any application claiming the property is not tenable in law. The Court can, if necessary, for just decision of the case, act *suo motu* in its inherent jurisdiction to implead proper and necessary parties to the case. This is clear in the decision of the Hon'ble Apex Court relied on by the learned counsel for revision-petitioner in **Sm.Saila Bala Dassi vs. Sm.Nirmala Sundari Dassi and another**¹. The Hon'ble Supreme Court at para-No.10 of the said Judgment, held that "*the Court can, if necessary, take action suo motu either under Order I Rule*

¹ AIR 1958 Supreme Court 394 (V 45 C 61).

10 or in its inherent jurisdiction to advance justice and it cannot be restricted on technical sense.”

18. Admittedly, the revision-petitioner did not challenge the earlier order of the Execution Court when respondent Nos.2 and 3 were impleaded and issued notice to them. Therefore, the revision is devoid of merits.

19. In the result, the Civil Revision Petition is ‘Dismissed’. There shall be no order as to costs.

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

B.V.L.N.CHAKRAVARTHI, J

26th April 2023.

DNB