

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.58 of 2015

-

ORDER:

-

This Civil Revision Petition is filed challenging the order

dt.26-12-2014 of the Senior Civil Judge, Bhimavaram in E.P.No.76 of 2012 in O.S.No.190 of 2007.

2. The impugned proceeding is a sale notice issued by the Senior Civil Judge, Bhimavaram in E.P.No.76 of 2012 filed by respondent for recovery of an amount of Rs.7,59,000/- and costs in O.S.No.190 of 2007 pursuant to the decree in the said suit granted by the Senior Civil Judge, Tanuku.

3. It is the contention of the learned counsel for petitioner Sri B.S.N. Naidu that in April, 2015, an appeal had been preferred to the District Court at Tanuku against the decree dt.16-02-2012 in O.S.No.190 of 2007 with an application for condonation of delay, and pending disposal of the appeal by the said Court, execution of the decree be stayed.

4. The learned counsel for respondent Sri E.Poornachander Rao opposed the said plea and

contended that the transaction in relation to which the suit had been filed in the year 2007, is of the year 2004; that the suit had been decreed after contest on 16-02-2012; and having filed an appeal in April, 2015 against the said judgment, it is not open to petitioner to stall the execution of the decree without obtaining any orders of stay from the appellate Court.

5. I find considerable force in the submission of the learned counsel for respondent. Although the learned counsel for petitioner contended that the promissory note on the basis of which the suit O.S.No.190 of 2007 had been filed and decreed was a forged document, I am of the view that the said contention can only be raised in the appeal preferred against the said judgment and cannot be raised in the execution proceedings because the executing Court cannot go behind the decree. Having borrowed money allegedly in 2004 and having suffered a decree in 2012, the petitioner cannot be allowed to stall the execution of the said decree pleading that he had filed an appeal against the decree in the suit three years later.

6. I therefore do not find any merit in the Revision and it is accordingly dismissed. No costs.

7. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 01-09-2015

Vsv