PRINCIPAL DISTRICT COURT, EAST GODAVARI AT RAJAMAHENDRAVARAM

C I R C U L A R

Dated 02-07-2025

Sub: COURTS – CIVIL – Guidelines to avoid recurrence of procedural lapses observed in relation to rival petitions arising from the same decree – Certain instructions – Issued.

Ref: Directions of the Hon'ble High Court dated 23.07.2024 in I.A.No.1 of 2024 in Civil Revision Petition No.911 of 2024.

* * *

In compliance with the directions issued by the Hon'ble High Court of Andhra Pradesh in I.A.No.1 of 2024 dated 23.07.2024 in Civil Revision Petition No.911 of 2024, all the judicial staff in this Unit are hereby instructed to ensure strict adherence to the following guidelines to prevent recurrence of procedural lapses in relation to rival petitions arising from the same decree:

1. **Proper Record Maintenance:** All the staff members must ensure timely numbering and tracking of petitions, even when records are consigned to the record room. Any delays in numbering petitions must be accompanied by a written explanation. Case records in which petitions for passing final decree petitions have not been filed must be kept in the respective record rooms separately, without consigning them to the Central Record Room.

2. **Cross-referencing of Dockets:** All dockets related to petitions under Section 5 of the Limitation Act, Order IX Rule 13 of Code of Civil Procedure, and execution proceedings arising from the same suit must explicitly refer the pendency of related matters. This will ensure clear cross-referencing between rival petitions and execution petitions within the same Court, enabling Presiding Officers to comprehensively understand interconnected cases.

3. **Assignment of Clerks:** Clerks handling execution branch records must coordinate efficiently with clerks responsible for suit branch records. This coordination should ensure that during the numbering of execution petitions, it is determined whether any Order IX Rule 13 petitions for setting aside ex parte decrees in the same suit are pending. Similarly, clerks must verify the pendency of set-aside petitions before numbering any delivery petitions under execution proceedings.

All the Presiding officers must actively instruct their staff members to prioritize procedural clarity and ensure that the stages of rival petitions are properly noted on dockets and carried forward accurately. All the staff members are directed to strictly follow these instructions to uphold procedural integrity and ensure effective administration of justice.

Sd/-
2.7.25

PRINCIPAL DISTRICT JUDGE

To

All the Judicial Officers in the Unit.

Dis.6600
02.7.25

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No.911 of 2024

Petition under Section 115 of C.P.C, aggrieved by the Order dated 16.2.2024 passed in E.A.No.488 of 2019 in E.P.No.45 of 2017 in O.S.No.107 of 2015 passed by the Executing Court- Principal Senior Civil Judge Court at Rajamahendravaram, East Godavari District.

Between:

Patnala Sriramachandra Murthy, S/o Late Veeranna, Aged about 68 years, R/o D.No. 4-99/A, Near Devi Centre, Dosakakyalapalli Village, Korukonda Mandal, East Godavari District.

...Petitioner/Petitioner/J.Dr in E.A.No.488/2019

in E.P.No.45/2017in O.S.No.107/2015

AND

Dasarapudi Subramanyam, S/o Veerabhadra Rao, Aged about 44 years, Business, Dosakayalapalli Village, Korukonda Mandal, East Godavari District

...Respondent/Respondent/D.Hr in E.A.No.488/2019

in E.P.No.45/2017in O.S.No.107/2015

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an Interim Order by way of stay of all further proceedings

against the Order dated 16.2.2024 in E.A.No.488 of 2019 in E.P.No. 45 of 2017 in O.S.No.107 of 2015 passed by the Executing Court- Principal Senior Civil Judge Court, Rajamahendravaram, East Godavari District pending disposal of the main Civil Revision Petition.

Counsel for the Petitioner : Sri Chandra Sekhar Ilapakurti

Counsel for the Respondent : Sri B Sudhakar Kumar

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.911 OF 2024

Between:

Patnala Sriramachandra Murthy

.....Petitioner

AND

Dasarapudi Subramanyam.

.....Respondent

DATE OF JUDGMENT PRONOUNCED:23.07.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals ✓Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? ✓Yes/No

RAVI NATH TILHARI, J

* THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

+ CIVIL REVISION PETITION No.911 OF 2024

% 23.07.2024

Between:

Patnala Sriramachandra Murthy

....Petitioner

Versus

$ Dasarapudi Subramanyam.

.....Respondent

! Counsel for the Petitioner: Sri I. Chandra Sekhar

^ Counsel for the respondent: Nil

< Gist :

> Head Note:

? Cases Referred:

[1] (2005) 1 SCC 201
[2] (2004) 2 SCC 783
[3] 1977(2) SCC 835
4 (2006) 5 SCC 680
[5] (1993) 2 SCC 56
[6] 2022 SCC OnLine Del 3344
7. (2001) 3 SCC 54

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No.911 OF 2024

JUDGMENT:

1. Heard Sri Chandra Sekhar Ilapakurti, learned counsel for the petitioner.

2. This civil revision petition has been filed under Section 115 of the Code of Civil Procedure (CPC) challenging the order dated 16.02.2024, passed in E.A.No.488 of 2019 in E.P.No.45 of 2017 in O.S.No.107 of 2015, by the Executing Court-Principal Senior Civil Judge, Rajamahendravaram, East Godavari.

3. The petitioner is the defendant and the respondent is the plaintiff/decree holder in O.S.No.107 of 2015. They shall be referred as in the suit.

4. The plaintiff Dasarapudi Subramanyam filed O.S.No.107 of 2015 against Patnala Sriramachandra Murthy-the defendant, for recovery of an amount of Rs.8,49,330/- based on the mortgage. The defendant remained ex parte. The learned Principal Senior Civil Judge, Rajamahendravaram passed the ex parte preliminary decree on 22.07.2015 for a sum of Rs.8,49,330/- with interest. Plaintiff filed I.A.No.1637 of 2015 to pass final decree. The defendant filed I.A.No.179 of 2020 under Section 5 of the Limitation Act along with I.A.No.180 of 2020 under Order IX Rule 13 C.P.C for setting aside the

ex parte preliminary decree dated 22.07.2015. These applications were filed on 11.02.2016 but were numbered only in the year 2020. These applications remained pending and without deciding the same, the final decree was passed on 22.06.2017, by the I Additional Senior Civil Judge, Rajamahendravaram. The plaintiff filed the Execution Petition in E.P.No.45 of 2017 seeking sale of the plaint schedule property of the defendant. The auction sale was conducted under order dated 20.09.2019 and was confirmed on 20.11.2019 in favour of the decree holder. The decree holder filed E.A.No.488 of 2019 in E.P.No.45 of 2017 seeking delivery of the schedule property. He also filed E.A.Nos.81 of 2020 and E.A.No.82 of 2020 seeking police aid and to break open the doors by the Court Amin. The defendant-J.Dr filed E.A No.23 of 2020 under Order 21 Rule 26 C.P.C seeking stay of execution proceedings. By order dated 16.02.2024, E.A No.23 of 2020 was rejected in default. By the same order dated 16.02.2024, the E.A.Nos.81 and 82 of 2020 were allowed permitting the police aid as also to break open the doors. Finally, the delivery was effected on 13.03.2024. E.P. No.45 of 2017 was closed vide order dated 21.03.2024, recording the delivery of possession.

5. Challenging the order dated 16.02.2024, the defendant/J.Dr has filed the civil revision petition.

6. On 30.04.2024, considering the submissions of the learned counsel for the petitioner, that the petitioner's applications I.A.No.179

of 2020 and I.A.No.180 of 2020, filed on 11.02.2016, for setting aside ex parte preliminary decree and for condonation of delay were not decided but the final decree was passed, the orders in execution proceedings were also passed; and conducting the auction in favour of the plaintiff-decree holder also providing the police aid for delivery of possession by breaking open the door, this Court, passed the order inter alia directing the learned Principal District Judge, East Godavari District, to submit the report based on the record. With respect to the issuance of notice to the plaintiff respondent, it was provided that, the same will be considered later on, after receipt of the report.

7. The order in present civil revision petition dated 30.04.2024 reads as under:

> "Heard Sri Chandra Sekhar Ilapakurti, learned counsel for the petitioner.
>
> 2. Learned counsel for the petitioner submits that the plaintiff/respondent instituted O.S.No.107 of 2015 for recovery of money on mortgage, in which the petitioner was defendant. In the suit a preliminary decree was passed on 22.07.2015 against which the petitioner filed I.A.No.179 of 2020 under Section 5 of limitation Act along with I.A.No.180 of 2020 under Order 9 Rule 13 of CPC for setting aside the exparte preliminary decree. The applications were filed in the year 2016 but numbered in 2020. During the pendency of those applications, learned Trial Court passed the final decree. For execution thereof, the plaintiff/respondent instituted Execution Petition No.45 of 2017, in which on 16.02.2024, the applications of the plaintiff i.e., E.A.Nos.81 & 82 of 2020 were allowed for delivering the property in favour of plaintiff/decree

holder and also for providing police aid. He further submits that the petitioner's applications i.e., I.A.Nos.179 & 180 of 2020 and Execution Petition are in the same Court. But without considering and deciding the SL. NO. DATE ORDER OFFICE NOTE aforesaid applications, final decree has been passed & the orders executing such decree have also been passed which is unsustainable. He further submits that the delivery of the property has also been affected after filing of this present Civil Revision Petition.

3. The learned Principal District Judge, East Godavari shall submit a report to this Court based on record before the next date of listing in sealed cover.

4. Post on 07.05.2024.

5. Let a copy of this order be sent to the learned Principal District Judge, East Godavari as also to the Principal Senior Civil Judge, Rajamahendravaram.

6. Issuance of notice to the plaintiff/respondent will be considered later on, after receipt of the report."

8. The learned Principal District Judge, East Godavari District submitted the report dated 06.05.2024 relevant portion of which reads as under:-

"REPORT IN C.R.P.No.911 of 2024.

May it pleases your lordship,

In due obedience to the direction of your lordship vide docket proceedings dated 30.04.2024. I verified the records in O.S.No.107/2015. I.A.No.1637/2015 in O.S.No.107/2015, E.P.No.45/2017 in O.S.No.107/2015, E.A.No.488/2019 in E.P.No.45/2017 in O.S.No.107/2015, inE.A.Nos.23/2020, 81/2020 and 82/2020 inE.P.No.45/2017 inO.S.No.107/2015, and also the petitions inI.A.Nos.179/2020 and I.A.No.180/2020 in O.S.No.107/2015 and submitting the report as follows:

a) Originally, Sri Darsapudi Subrahmanyam filed the suit in O.S.No.107/2015 against Sri Patnala Srirama Chandra Murthy i.e., the revision petitioner, seeking recovery of an amount of Rs.8,49,330/- on the foot of mortgage deed. Since defendant remained ex parte, the learned Principal Senior Civil Judge, Rajamahendravaram, passed preliminary decree dated 22.07.2015 against the defendant for a sum of Rs.8,49,300/- along with interest.

b) Thereafter, plaintiff filed a petition in I.A.No.1637/2015 in O.S.No.107/2015 to pass final decree and the said petition was allowed vide order dated 26.07.2017 by the I Additional Senior Civil Judge, Rajamahendravaram.

c) In the year 2017, plaintiff filed the execution petition in E.P.No.45/2017, seeking sale of petition schedule property of the defendant i.e., revision petitioner and at the culmination of enquiry, sale is conducted by the Principal Senior Civil Judge, Rajamahendravaram vide order dated 20.09.2019 and during the sale of the schedule property, the judgment debtor i.e., revision petitioner was also present and finally, sale is confirmed vide order dated 20.11.2019.

d) Thereafter, decree holder filed another petition in E.A.No.488/2019 in E.P.No.45/2017 in O.S.No.107/2015 seeking delivery of schedule property and in that petition, he has filed two more petitions in E.A.No.81/2020 and E.A.No.82/2020 seeking permission for police aid and also to break open the doors by the court Amin.

e) At the culmination of enquiry, both the E.As in E.A.No.81/2020 and E.A.No.82/2020, petitions are allowed permitting to take police aid and also to break open the doors and finally, delivery was effected on 13.03.2024 and accordingly, the said petition is also closed vide order dated 21.03.2024 by recording delivery.

f) It is pertinent to mention here that having filed a petition in E.A.No.23/2020 in E.A.No.488/2019 E.P.No.45/2017, seeking stay of execution proceedings under E.P.No.45/2017 and E.A.No.488/2019,

the revision petitioner remained absent and as such, finally, the said petition was dismissed for default vide order dated 16.02.2024.

g) Admittedly, the **revision petitioner has filed two petitions in I.A.No.179/2020 and 180/2020** under Section 5 of Limitation Act and Order 9 Rule 13 of Code of Civil Procedure, seeking condonation of delay and also to set aside the ex parte decree dated 22.07.2015 **and the said two petitions are filed not in the year 2015, but are filed on 11.02.2016. The said petitions are numbered in the year 2020** and the reason for numbering the said petitions with delay of 4 years is that the original record in the main suit and final decree petition are consigned to the record room of Principal Senior Civil Judge's Court, Rajamahendravaram and subsequently, to the Principal District Judge's Court, Rajamahendravaram.

h) Subsequently, as per the request of the Principal Senior Civil Judge, Rajamahendravaram, record was transmitted to the Principal Senior Civil Judge's Court, for reference in the petitioners under Section 5 of Limitation Act and Order 9 Rule 13 of Code of Civil Procedure, vide letter dated 05.02.2020.

i) The said petitions are heard by the then learned Presiding Officer and posted for orders in the year 2022 itself and after transfer of the said presiding officer succeeding presiding officer reopened the matter to hear the same, and the petitioner continuously sought for time for submitting arguments.

j) There is no reference on the dockets of both the petitions filed under Section 5 of Limitation Act and Order 9 Rule 13 of Code of Civil Procedure about the pendency of execution proceedings in E.P.No.45/2017.

k) There is also no reference on the dockets of either in E.P.No.45/2017 or in E.A.No.488/2019 about the pendency of both the petitions in I.A.No.179/2020 and 180/2020 filed by the revision petitioner.

l) After allowing police aid petition and break open petition and just before, two days of effecting delivery, revision petitioner filed another

petition inI.A.No.171/2024, seeking stay of the judgment and decree passed in O.S.No.107/2015 till disposal of I.A.No.179/2020 and 180/2020 (set aside petition and delay condonation petition), however, by that time itself, sale was confirmed and delivery warrant along with police aid and break open orders are issued by the Principal Senior Civil Judge, Rajamahendravaram.

m) Admittedly, both the matters are pending on the file of same court i.e., Principal Senior Civil Judge's Court, Rajamahendravaram. As per my enquiry, two separate clerk have been dealing with Execution petition record, and set aside petition and delay condonation petition in the court of Principal Senior Civil Judge's Court, Rajamahendravaram.

n) At least, they should have been mentioned about the pendency of petitions on the docket of execution petition or pendency of execution petition on the dockets of set aside ex parte decree and delay condonation petitions. The then learned presiding officer concerned should have been given instructions to the staff members, to deal with this type of rival petitions arose out of same decree.

o) As seen from the docket order, neither of the advocate represented before the court with regad to the pendency of all the petitions.

p) In both the petitions filed seeking police aid and break open, respondent i.e., revision petitioner having received notices, remained ex parte.

q) At least the revision petitioner being aggrieved party should have been submitted before the court with regard to the pendency of the applications filed by him.

r) As seen from the record; filing of the C.R.P.No.911/2024 is not in the knowledge of the then learned presiding officer.

s) In the main suit, defendant remained ex parte and in the execution petition also having paid some amount again failed to resist the petitions in E.A.No.81/2020 and 82/2020. Added to it, he was also

present at the time of sale. The judgment debtor i.e., revision petitioner should have been taken care at the earliest point of time.

t) The learned presiding officer who has ordered delivery and recorded delivery also transferred recently.

Thus, I submit report as called for by your lordship for consideration.

Sd/-
Principal District Judge,
Rajamahendravaram"

9. Considering the report of the learned Principal District Judge, based on record, finding that the facts on material aspects for decision of this petition being correct and for the order proposed to be passed which shall, at present, not affect adversely the plaintiff/respondent and also being of the view that issuance of the notice to the plaintiff/respondent would un-necessarily delay due administration of justice, the issuance of notice to the plaintiff-respondent is being dispensed with, however, the court will safe guard the interest of the plaintiff-respondent as well.

10. Certain aspects, as brought to the notice of this Court vide the report of the learned Principal District Judge require serious consideration, as they have affected the due administration of justice, and also to ensure that such aspects, do not reoccur, adversely affecting the administration of justice in a fair and transparent manner to maintain rule of law.

11. One such aspect, is that the petitioner's I.A.No.179 of 2020 and I.A.No.180 of 2020 under Section 5 of the Limitation Act and under Order IX Rule 13 C.P.C respectively, for condonation of delay and to set aside the ex parte preliminary decree dated 22.07.2015, were filed on 11.02.2016 but were numbered with inordinate delay of four years in the year 2020.

12. The reason as coming forth for the above is that the original record in the original suit and the final decree petitions were sent to the record room of Principal Senior Civil Judge, Rajamahendravaram, and subsequently to the Principal District Judge's Court, Rajamahendravaram. Subsequently, as per the request of the Principal Senior Civil Judge, Rajamahendravaram, the record was transferred to the Principal Senior Civil Judge's Court for reference in the petitions under Section 5 of the Limitation Act and under Order IX Rule 13 C.P.C, vide letter dated 05.02.2020.

13. Further reason coming forth is that, in the dockets of both the petitions (i.e I.A.No.179 and 180 of 2020), there was no reference about the pendency of the execution proceedings in E.P.No.45 of 2017. Similarly in E.P.No.45 of 2017 or in E.A.No.480 of 2019, there was no reference about the pendency of I.A.Nos.179 and 180 of 2020, though both the matters, the execution and the applications for setting aside the ex parte preliminary decree with condonation of delay, were

pending on the file of the same court, the Principal Senior Civil Judge Court, Rajamahendravaram.

14. The learned Principal District Judge, has rightly observed in the report that "atleast they should have been mentioned about the pendency of the petitions on the docket of execution petition or pendency of the execution petitions on the dockets of setting aside ex parte petition and delay condonation petitions and instructions to that effect should have been given by the learned Presiding Officer to deal with such type of rival petitions, which arose out of the same decree". But, what should have been done, was not so done.

15. Another aspect, which is of much concern for the court is that the Executing Court of Principal Senior Civil Judge, Rajamahendravaram did not go through the record carefully. Both the files were before the same court, in any case on and from 05.02.2020 (vide para 'h' of the report). Even if, the petitioner remained absent on 16.02.2024, before the Executing Court in the petitions filed by the decree holder seeking police aid and to break open the door, and even if the application of petitioner-defendant E.A.No.23 of 2020 was dismissed in default on 16.02.2024, the learned Principal Senior Civil Judge, Rajamahendravaram before passing further order towards execution, must have seen the pendency of I.A.Nos.179 & 180 of 2020 and must have proceeded to decide those applications first, pending in the same court of Principal Senior Civil Judge, Rajamahendravaram.

Rejection of E.A No.23 of 2020 in default or defendant's absence could not be to ignore the pendency of I.A.Nos.179 and 180 of 2020 and bye-pass their first determination.

16. The petitioner/J.Dr's E.A.No.23 of 2020, seeking stay of execution proceedings with affidavit has been filed along with the present petition and the contents thereof deserve to be reproduced as under:

"IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE RAJAMAHENDRAVARAM

E.A.NO.23/2020

in

E.A.NO. 488/2019

E.P.NO. 45/2017
O.S.NO. 107/2015

BETWEEN

Patnala Sri Rama Chandra Murthy

.....Petitioner/Defendant/J.Dr

AND

Darsapudi Subrahmanyam

..Respondent/Plaintiff/D.Hr.

PETITION FILED UNDER ORDER 21 RULE 26 OF CIVIL PROCEDURE CODE

For the reasons stated in the accompanying affidavit, the petitioner prays that the Hon'ble Court may be pleased to stay all further proceedings arising out of Decree and Judgment in O.S.No.107/2015 dated 22.07.2015 and above E.A.No.488 of 2019 proceedings **pending disposal of petitions**

filed under Order 9 Rule 13 of Civil Procedure Code and Section 5 of Limitation Act vide S.R.No.1017 and 1018 dated 11.02.2016, else the petitioner suffers irreparable loss.

Rajamahendravaram, Be pleased to consider.

Date.08.01.2020 Advocate for petitioner/Defendant/J.Dr.

IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE RAJAMAHENDRAVARAM

E.A.NO. 23/2020

E.A.NO. 488/2019
E.P.NO. 45/2017
O.S.NO. 107/2015

BETWEEN

Patnala Sri Rama Chandra Murthy

.....Petitioner/Defendant/J.Dr

AND

Darsapudi Subrahmanyam

.....Respondent/Plaintiff/D.Hr.

AFFIDAVIT FILED BY THE PETITIONER/DEFENDANT/J.Dr.

I Patnala Sri Rama Chandra Murthy S/o Late Veeranna, Hindu Age 66 years R/o D.no.4-99/A, Near Devi Center, Dosakayalapalli, Korukonda Mandal, Presently came down to Rajahmundry do here by solemnly affirm and state on oath as follows:

1) I am the petitioner herein and defendant in the main suit.

2) The plaintiff filed the suit for recovery of amount due under alleged mortgage deed. It is respectably submit that on 22-07-2015 my counsel entrusted the record to the junior advocate for filing petition for extension of time for filing written statement. By oversight

he could not file the same when the matter was called. Thereby my counsel was under impression that the matter was adjourned. Thereby the Hon'ble Court called me and as there was no representation on my behalf, the Hon'ble Court called me and set exparte. Thereupon I fell sick due to viral hepatitis during the period 01-07-2015 to 03-09-2015. I became weak I could not meet my advocate. Thereupon I received some papers from the Hon'ble Court and thereby I meet my advocate with those papers. **My counsel informed about the exparte decree on 22-07-2015. I have filed a petition under Order 9 Rule 13 of Civil Procedure Code and Section 5 of Limitation Act along with written statement vide S.R.No: 1017 and 1018 dated 11-02-2016 and the same are pending as on date.**

3) I submit that while the matters stood thus Final Decree was also passed against me and the present E.P. proceedings also started **and at present the matter is coming on for delivery of the schedule property but till date the said petitions filed to set aside exparte decree and condonation of delay were neither numbered nor returned and the same are pending in the same status till today and hence I am advised to file this petition to stay all further proceedings pending disposal of petitions filed under Order 9 Rule 13 of Civil Procedure Code and Section 5 of Limitation Act vide S.R.No: 1017 and 1018 dated 11-02-2016.**

4) I therefore pray that the Hon'ble Court may be pleased to stay all further proceedings arising out of Decree and Judgment in **O.S. No: 107/2015 dated 22-07-2015 pending disposal of petitions filed under Order 9 Rule 13 of Civil Procedure Code and Section 5 of Limitation Act vide S.R.No: 1017 and 1018 dated 11-02-2016.** Else I suffer irreparable loss.

Advocate for petitioner Deponent

Solemnly affirmed and signed before me on this 8th day of January, 2020 at Rajamahendravaram.

Attesting Officer."

17. A perusal of E.A.No.23 of 2020, dated 08.01.2020 shows that the filing and pendency of the petitioner's application under Order IX Rule 13 C.P.C and Section 5 of the Limitation Act, was clearly mentioned.

18. This court is of the view that even if, it be taken that, in the docket of E.P.No.45 of 2017, there was no mention about the applications I.A.Nos.179 and 180 of 2020 dated 11.02.2016 of the petitioner, considering the contents of application E.A.No.23 of 2020 with affidavit, the fact of pendency of the petitioner's application to set aside the ex parte preliminary decree with condonation of delay i.e., I.A.Nos.179 and 180 of 2020, must have come to the notice of the learned Principal Senior Civil Judge, Rajamahendravaram. It was the judicial duty of the learned Principal Senior Civil Judge, Rajamahendravaram to have taken into consideration such fact and before passing any order on the application of the decree holder, towards execution, to have enquired about those applications and to proceed to decide those applications first, being the same court, instead of keeping those petitions pending and un-disposed of and executing the final decree.

19. The manner in which the learned Principal Senior Civil Judge, Rajamahendravaram has proceeded with the matter, in the present case, and has executed the ex parte decree, without deciding the pending applications for setting aside the ex parte decree cannot be sustained by applying any principle of law in due administration of justice.

JUDICIARY IS THE REPOSITORY OF PUBLIC FAITH:

20. In **Tarak Singh and another vs. Jyothi Basu and others**[1], the Hon'ble Apex Court observed that today, judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors failed people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Para 22 of **Tarak Singh** (supra) reads as under:

> "22. Again, like any other organ of the State, judiciary is also manned by human beings but the function of judiciary is distinctly different from other organs of the State in the sense its function is divine. Today, judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors failed people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a Judge

[1] (2005) 1 SCC 201

is being judged with more stricter than others. Integrity is the hall-mark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that temple of justice do not crack from inside, which will lead to catastrophe in the justice delivery system resulting in the failure of Public Confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside.

ACTUS CURIAE NEMINEM GRAVABIT:

21. It is settled principle in law that an act of court shall prejudice no man.

22. In **Busching Schmitz Private Ltd vs P.T. Menghani And Anr**[2], it was observed that:

> "The doctrine that the judicial machinery, while enforcing the law, shall forbid its being misused is another dimension of two deeply rooted, but inter-connected maxims: Actus curiae neminem gravabit (An act of the court shall prejudice no man: Jenk. Cent. 118) and Actus legis est damnosus (The act of the law is hurtful to no one: 2 Inst. 287); Actus legis nemini facit injuriam (The act of the law does injury to no one 5 Coke, 116). This principle is fundamental to any system of justice and applies to our jurisprudence."

23. In **Karnataka Rare Earth & Anr. Vs. Senior Geologist, Department of Mines & Geology & Anr.**,[3] the Hon'ble Apex

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[2] 1977(2) SCC 835

Court observed that this maxim "Actus Curiae neminem gravabit" is not confined in its application only to such acts of court which are erroneous; the doctrine is applicable to all such acts of the court as to which it can be held that the court would not have so acted had it been correctly appraised of all the facts and the law.

24. It is apt to refer para 10 of **Karnataka Rare Earth** (supra) as under:

> "10. In **South Eastern Coalfields Ltd,** (supra), this Court dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. **The Court referred to the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law.** It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would

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[3] (2004) 2 SCC 783

have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost."

25. In **Mr. Shaikh Salim Haji Abdul Khayumsab vs Mr. Kumar and others-2006 (1) SCC 46,** it was observed that this maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law.

JUSTICE SHOULD ALSO BE SEEN TO BE DONE:

26. It is also one of the salutary principles of administration of justice that the justice should not only be done but it should also be seen to be done.

27. It was the judicial duty of the learned Principal Senior Civil Judge, Rajamahendravaram to have first considered and decided the petitioner's applications I.A.Nos.179 & 180 of 2020 under Section 5 of Limitation Act and under Order IX Rule 13 C.P.C respectively. The same was not done. Those applications remained pending. The final decree was passed. It was executed as well. This act of the court has resulted in not only causing prejudice to the petitioner for which grievance he has approached this court but, is also contrary to the principle that justice must also seen to have been done. The litigant expects

and reasonably so, that his pending applications for recall of ex parte preliminary decree shall be first considered before proceeding for passing final decree or for execution thereof.

28. Though the ex parte.decree has been executed, but in the view of what this court as considered above, the petitions I.A.Nos.179 and 180 of 2020 in O.S.No.107 of 2015 which had not been considered and decided, deserves to be considered and decided by the learned court notwithstanding the execution of the ex parte decree passed in the suit.

29. Considering the overall facts and circumstances of the case, invoking the powers under Article 227 of the Constitution of India as well, in addition to the powers under Section115 of C.P.C, this petition is being disposed of finally with the following directions:-

(A) The defendant-petitioner's I.A.Nos.179 of 2020 and 180 of 2020 in O.S.No.107 of 2015 in the Court of Principal Senior Civil Judge, Rajamahendravaram shall be considered and decided by the learned Principal Senior Civil Judge, Rajamahendravaram, East Godavari District/ the court concerned, expeditiously, within a period of two months from the date of receipt of copy of this order, after giving due opportunity of hearing to the defendant-petitioner and to the plaintiff-respondent, in accordance with law.

(B) Depending upon the fate of I.A.Nos.179 and 180 of 2020, the parties shall be at liberty to take such further legal course of action, as may be open to them under law, including with respect to the decree passed in O.S.No.107 of 2015 and the orders passed in E.P.No.45 of 2017 as also for restitution.

30. Before parting, this Court cannot simply overlook the conduct of the judicial proceedings, by the concerned judicial officer. However, the court is not making any observation 'on the conduct of the concerned judicial officer who had decided the proceedings under scrutiny.' This court is not oblivious of the Hon'ble Apex Court's pronouncement "in the matter of 'K', A Judicial Officer"[4] wherein it has been observed and held in para 16 as under:

> "16. We must not be understood as meaning that any conduct of a subordinate judicial officer unbecoming of him and demanding a rebuff should be simply overlooked, But there is an alternate safer and advisable course available to choose....."

31. Learned Principal District Judge, Rajamahendravaram, East Godavari District shall issue necessary directions to its judicial staff, on the points (g), (j), (k), (m) & (n) as mentioned in its report in particular, so that such instances do not recur.

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[4] (2001) 3 SCC 54

32. Learned Principal District Judge, Rajamahendravaram, East Godavari District shall also consider to initiate disciplinary proceedings against the concerned staff, as per procedure, for the shortcomings, pointed out in its report.

33. With the above observations and directions, the civil revision petition stands disposed of.

34. No order as to costs.

35. A copy of this judgment shall be circulated to all the learned Principal District Judges of all the Districts in the State of Andhra Pradesh as also to the A.P. Judicial Academy, Amaravati.

Consequently, the Miscellaneous Petitions, if any, pending shall also stand closed.

SD/- SHAIK MOHD. RAFI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to Hon'ble Sri Justice RAVI NATH TILHARI
(For his Lordships Kind Perusal)

To

1. The Principal Civil Judge (Senior Division), Rajamahendravaram, East Godavari District.
2. The Principal District Judge, Rajamahendravaram, East Godavari District.
3. The Principal District Judge, Eluru, West Godavari District.
4. The Principal District Judge, Srikakulam, Srikakulam District.
5. The Principal District Judge, Vizianagaram, Vizianagaram District.
6. The Principal District Judge, Visakhapatnam, Visakhapatnam District.
7. The Principal District Judge, Machilipatnam, Krishna District.
8. The Principal District Judge, Guntur, Guntur District.
9. The Principal District Judge, Ongole, Prakasam District.

10.The Principal District Judge, Nellore, SPSR Nellore District.
11.The Principal District Judge, Kadapa, YSR Kadapa District.
12.The Principal District Judge, Kurnool, Kurnool District.
13.The Principal District Judge, Chittoor, Chittoor District.
14.The Principal District Judge, Ananthapur, Ananthapur District.
15.The A.P. Judicial Academy, Mangalagiri, Guntur District
16.One CC to Sri Chandra Sekhar Ilapakurti, Advocate [OPUC]
17.One CC to Sri B.Sudhakar Kumar, Advocate [OPUC]
18.Nine (09) L.R. Copies.
19.The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
20.The Secretary, Andhra Pradesh High Court Advocates' Association Library, High Court Buildings, Amaravathi.
21.The Section Officer, V.R Section, High Court of Andhra Pradesh.
22.Three CD Copies

TK

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HIGH COURT

DATED:23/07/2024

ORDER

CRP.No.911 of 2024



DISPOSING OF THE CIVIL REVISION PETITION WITHOUT COSTS