

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY, THE TWENTY EIGHTH DAY OF JANUARY  
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI



CIVIL REVISION PETITION NO: 627 OF 2024

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to i) allow the C.R.P., by setting aside the order passed in E.A.No.219/2014 in E.P.No.35/2008 in O.S.No.572/2006 dt. 4-3-2024 on the file of the I Addl. Civil Judge (Senior Division), Nellore ii) and to grant such other relief or reliefs as this Court deems fit and proper in the circumstances of the case.

**Between:**

Puram Bhimaiah, s/o Manikyam, aged about 62 years, occ. Business, r/o D.No. 16/126, Corner of Sikharamvari Street, Nellore.

...PETITIONER/RESPONDENT

AND

Gadamsetty Venkata Madhusudhan Rao, S/o Peddabbi, aged 60 years, occ. Private Employee, r/o opp. State Bank of Hyderabad, Ramamurthy Nagar, Nellore

...RESPONDENT/PETITIONER

**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 grant stay of all further proceedings pursuant to the orders passed in E.A.No.219/2014 in E.P.No.35/2008 in O.S.No.572/2006 dt.4-3-2024 on the file of the I Addl. Civil Judge (Senior Division), Nellore, including taking over the possession of the E.P. Schedule property, pending disposal of the main C.R.P., in the interest of justice.

**Counsel for the Petitioner: SRI. KOLLU RAJASEKHAR**

**Counsel for the Respondents: SRI HARINADH NIDAMANURI**

**The Court made the following: ORDER**

APHC010142472024



IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)

[3311]

TUESDAY, THE TWENTY EIGHTH DAY OF JANUARY  
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE MS JUSTICE B S BHANUMATHI**

**CIVIL REVISION PETITION NO: 627/2024**

**Between:**

Puram Bhimaiah

**...PETITIONER**

**AND**

Gadamsetty Venkata Madhusudhan Rao

**...RESPONDENT**

**Counsel for the Petitioner:**

1. KOLLU RAJASEKHAR

**Counsel for the Respondent:**

1. HARINADH NIDAMANURI

**The Court made the following:**

**ORDER:**

This revision petition is filed by the judgment debtor aggrieved by the order, dated 04.03.2024, allowing E.A.No.219 of 2014 in E.P.No.35 of 2008 in O.S.No.572 of 2006 on the file of the Court of I Additional Civil Judge (Senior Division), Nellore, filed by the auction purchaser under Order XXI, rule 95 CPC to deliver the vacant possession of the petition schedule property.

2. Heard *Sri K. Rajashekar*, learned counsel for the petitioner/ judgment debtor and *Sri N. Harinadh*, learned counsel for the respondent/auction purchaser.

3. The facts, in brief, are as follows:

The suit in O.S.No.572 of 2006 was filed by the plaintiff, Raja Surendra Kumar, on the file of the Court of I Additional Senior Civil Judge, Nellore, for recovery of an amount of Rs.1,82,904/-. The suit was decreed on 24.09.2007 for an amount of Rs.1,82,904/- and thereafter, the DHr filed E.P.No.35 of 2008 for recovery of an amount of Rs.2,04,693/-. The property was sold to the petitioner in E.A.No.219 of 2014, for Rs.6,55,000/- in the auction held on 30.03.2009. The petitioner/JDr filed E.A.No.96 of 2009 to permit him to deposit the EP amount and consequently to set aside the sale held on 30.03.2009.

The petition was dismissed on 24.07.2009. Against the order, C.R.P.No.3784 of 2009, along with C.R.P.M.P.No.5227 of 2009, was preferred. By order, dated 13.08.2009, stay was granted with a condition to deposit the entire decretal amount within two weeks. Accordingly, the petitioner deposited the amount of Rs.2,63,629/- on 24.08.2009. Thereafter, the revision was dismissed as infructuous on 04.08.2011. The sale was confirmed on 27.12.2011. Aggrieved by the same, the JDr again preferred C.R.P.No.1028 of 2012. The order, dated 05.03.2012, passed therein reads as follows:

“..to peruse the entire record afresh after verifying as to whether the petitioner/JDr. Paid the entire decretal amount and to pass an elaborate order if the same is not paid. Till such time, the operation of the impugned order is hereby set aside.”

On 05.11.2012, the execution Court passed an elaborate order and ordered for issuance of sale certificate. Aggrieved by the same, the JDr preferred revision in C.R.P.No.6190 of 2012. The said revision was dismissed on 23.04.2014.

4. At this stage, on 28.11.2014, the auction purchaser filed the present petition in E.A.No.219 of 2014 seeking delivery of the schedule property and on the same day, delivery was ordered without issuing notice to the respondent/JDr.



5. Aggrieved by the order, dated 28.11.2014, directing delivery of property without notice, the JDr filed C.R.P.No.5364 of 2015. By order, dated 13.02.2023, the revision was allowed setting aside the orders of delivery of possession and directing the execution Court to dispose of E.A.No.219 of 2014 within three months after receipt of the counter filed by the respondent/JDr.

6. The JDr filed a counter raising mainly the following contentions:

The petition is barred by limitation. The petition is not maintainable. The respondent/JDr already deposited the entire EP amount along with poundage charges on 24.08.2009. If the auction purchaser is directed to take return of the deposited amount of sale price of Rs.6,55,000/-, no prejudice would be caused to him. The petition is liable to be dismissed.

7. The execution Court allowed the petition on 04.03.2024 and ordered issuance of warrant for delivery of the property.

8. Hence, this revision is preferred by the judgment debtor.

9. The main contention of the revision petitioner is that the petition in E.A.No.219 of 2014 for delivery of the property is barred by limitation as the petition ought to have been filed within one year from the date of confirmation of sale i.e., 27.12.2011, but not the date of issuance of sale

certificate, as per Article 134 of the Limitation Act, 1963. In this regard, the learned counsel for the petitioner referred to the decision of the Supreme Court in **Pattam Khader Khan vs. Pattam Sardar Khan and Ors.**<sup>1</sup>.

10. It is further contended that the order of stay granted in C.R.P.No.6190 of 2012, dated 11.12.2012, was in force for only three (03) weeks till 01.01.2013 and not extended thereafter, and unless the interim order granted for a limited period, is extended, it does not survive after that period, but E.A.No.219 of 2014 was filed on 28.11.2014, with an abnormal delay of 731 days, i.e., beyond the period of one (01) year of limitation and so the petition ought to have been dismissed. With regard to effect of non-extension of interim order granted for a limited period, the learned counsel for the revision petitioner/JDr placed reliance on the following decisions:

- (i) **Dr. Luis Proto Barbosa Vs. Union of India and others**<sup>2</sup>;
- (ii) **Karam Chand Thapar Brothers (C S) Ltd. Vs. Nandini Roofing System Pvt. Ltd. And others**<sup>3</sup>; and
- (iii) **Chief Manager/Authorized Officer, Bank of India, Hyderabad Vs. Debts Recovery Tribunal, Hyderabad and others**<sup>4</sup>

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<sup>1</sup> 1996 AIR SCW 3984

<sup>2</sup> AIR 1992 SUPREME COURT 1812

<sup>3</sup> 2010 Law Suit (All) 1725

<sup>4</sup> 2017 (2) ALT 384 (D.B)

11. Article 134 of the Limitation Act reads as under:

	Description of application	Period of Limitation	Time from which period begins to run
134	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree	One year	When the sale becomes absolute

12. In **Pattam Khader Khan** (1 supra), it was held at para No.11 as follows:

"11. Order 21 Rule 95 providing for the procedure for delivery of property in occupation of the judgment-debtor etc, requires an application being made by the purchaser for delivery of possession of property in respect of which a certificate has been granted under Rule 94 of Order 21. There is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application. On the sale becoming absolute, it is obligatory on the Court though; to issue the certificate. That may, for any reason, get delayed. Whether there is failure to issue the certificate or delay of action on behalf of the Court or the inaction of the purchaser in completing the legal requirements and formalities, are factors, which have no bearing on the limitation prescribed for the application under Article 134. The purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued. It is true though that order for delivery of possession cannot be passed unless sale certificate stands issued. It is manifest therefore that the issue of a sale



certificate is not "*sine qua non*" of the application, since both these matters are with the same Court. The starting point of limitation for the application being the date when the sale becomes absolute i.e. the date on which title passed, the evidence of title, in the form of sale certificate, due from the Court, could always be supplied later to the Court to satisfy the requirements of Order 21 Rule 95. See in this regard **Babulal v. Annapurnabai** [AIR (1953) Nag 215], which is a pointer. It, therefore, becomes clear that the title of the Court auction-purchaser becomes complete on the confirmation of the sale under Order 21, Rule 92, and by virtue of the thrust of Section 65 CPC, the property vests in the purchaser from the date of sale; the certificate of sale, by itself, not creating any title but merely evidence thereof. The sale certificate rather is a formal acknowledgement of a fact already accomplished, stating as to what stood sold. Such act of the Court is pristinely a ministerial one not judicial. It is in the nature of a formalization of the obvious."

13. The execution Court failed to answer the legal proposition, which is set out by the Supreme Court in the case of **Pattam Khader Khan vs. Pattam Sardar Khan and Ors** (1 supra), though it referred the same in its order. In view of the legal proposition, the period of limitation shall be calculated from the date of confirmation of the sale, but not the date of issuance or order for issue of sale certificate. Though initially sale was confirmed by an order, dated 27.12.2011 in C.R.P.No.1028 of 2012, the order, dated 27.12.2011 was stayed with a

direction to the execution Court to pas order afresh. Thus, again, on 05.11.2012, sale was confirmed. But, the same was challenged in C.R.P.No.6190 of 2012 in which interim stay of the order, dated 05.11.2012, was granted for three weeks. Thereafter, obviously the interim order was not extended. Therefore, it was contended that the petition in E.A.No.219 of 2014 filed on 28.11.2014 long beyond one year after the lapse of the expiry of the interim stay is barred by limitation. But, the learned counsel for the auction purchaser submitted that unless the interim order of stay is vacated, the same would continue to operate. To answer this disputed legal aspect, the following decisions are referred here:

(i) In **Dr. Luis Proto Barbosa** (2<sup>nd</sup> supra), it was held by the Supreme Court, at para No.9 as follows:

“The question as to what is the outer terminal point of the operation of the restraint, when the expression “in the meantime” is used is arguable. That expression takes its colour from the context. They are “words of relation and refer not only to a time that is to begin, but to a time which is also to end”. It is difficult to say the period of the restraint spilled over 30<sup>th</sup> October, 1990 and the restraint on altering the “status quo” continued. The order was not made either at the instance nor for the benefit of the appellant. In the facts of the case we do not think we are justified in construing the “status

quo” order to continue to operate even after 30<sup>th</sup> October, 1990 or even if (it) did, it enured to the benefit of the appellant.”

(ii) In **Karam Chand Thapar Brothers (C S) Ltd** (3<sup>rd</sup> supra), it was held at paragraph No.11 of the above decision as follows:

“11. The Hon'ble Apex Court in the case of **Ashok Kumar Vs. State of Haryana and Another**<sup>5</sup> held as follows:

“There is no warrant for the proposition, as was stated by the High Court that unless an order of stay passed once even for the limited period is vacated by an express order or otherwise the same would continue to operate. We, therefore, are of the opinion that the judgment of the High Court cannot sustain, which is set aside accordingly.”

(iii) In **Chief Manager/Authorized Officer, Bank of India, Hyderabad** (4 supra), it was held at paras 8 and 9 as follows:

“8. The other decision placed reliance by the respondents 2 to 4 is of High Court of Punjab and Haryana in **Malook Singh**<sup>6</sup>: where a contempt of Court proceedings by suo motu action initiated for arrest of the petitioner stayed by High Court in a protection matter and in considering the matter the Punjab High Court only placed reliance on the expression of the Bombay High Court in **Govinda Bhagoji Kamable v.**

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<sup>5</sup> 2007 (3) SCC 470

<sup>6</sup> MANU/PH/0415/2013

**Sadu Bapu Kamable**<sup>7</sup>. In the expression of the Bombay High Court in **Govinda Bhagoji** (supra) there was an interim stay order provides for stay meantime. It reads that "notice to respondents returnable on 09.12.2002. In the meantime ad-interim *ex parte* relief in terms of prior clause (b)". It was observed that said order was not vacated later. Intention of the Court which issued the same was to issue notice and grant stay in the mean time and from the phrase 'in the mean time' used in the order as per dictionary meaning 'till happening of a particular event or until something expected happens' and the said event was hearing of the application after service of notice to respondents and whenever the Court intends to grant interim relief to a particular date, it was always mentioning in the order specifically as operative till that date and it was not so mentioned and thereby stay order is in force for not vacated. The conclusion arrived of the order deemed in force is from what the general practice of mentioning otherwise as till a date.

9. In fact expression of the apex Court in **Ashok Kumar** [2007 (4) ALT 52 (SC) : 2007 (2) An. W.R. 185 (SC) (supra) referred in **Anil Chitoda** of Rajasthan High Court MANU/RH/0575/2009 (supra) clearly speaks as a general principle that unless specifically extended, an interim order for a limited period cannot be considered continue in operation. Further, the Apex Court even earlier in a matter like the one on hand cleared the cloud in **Dr. Luis Proto Barbose v.**

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<sup>7</sup> MANU/MH/0393/2004



**Union of India** [AIR 1992 SC 1812 (3 JB)] while interpreting the order came before it which reads:

"List the matter on 30th October, 1990. In the meantime *status quo* as on today will continue".

14. All the three judgments are on the point when the interim order is not extended, the interim order granted earlier is in force or not.

15. The learned counsel for the respondent placed reliance on the decision in **N. Mahalakshmi and others Vs. Principal Secretary (L.A) and others**<sup>8</sup>, dated 03.08.2016, wherein it was held by a single Judge Bench of the High Court of Andhra Pradesh, at paragraph Nos.8 & 12 as follows:

"8.....specific extension of interim orders is not necessary in cases where there are interim orders, with a direction to list the matters after certain date or after a few weeks, and the matter is not listed or not taken up by the Court on that date. In such eventuality, the interim orders shall continue to be in operation till the matter is listed and taken up for hearing and a specific order vacating the interim orders is passed by the Court.

12. ....I direct the Registry to send a copy of this order to all the Bar Associations of all the Districts, with a copy to all the Principal District Judges/District Judges in both the States for dissemination among the officers under their control.

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<sup>8</sup> 2016 (6) ALT 727 (S.B)

Registry shall also mark a copy of this order to both the State Governments.”

16. In view of the above decision, dated 11.07.2016, of the Division Bench of the High Court of A.P based on the decision of the Supreme Court, the subsequent decision of the Bench of single Judge, which did not consider any of these decisions cannot be followed. Thus, in the present case, since the interim order was passed on 11.12.2012 to the effect that *‘Meanwhile there shall be stay of all further proceedings, pursuant to order, dated 05.11.2012, passed in E.P.No.35 of 2008 in O.S.No.572 of 2006’*; and was not extended thereafter, it had no force after three weeks.

17. As held by the Supreme Court in **Pattam Khader Khan vs. Pattam Sardar Khan and Ors** (supra), the remedy open to the petitioner is to file a separate suit and not interlocutory application for delivery of the property, if the petition is barred by limitation. The suit is also subject to period of limitation.

18. In the present case, it would lead to an anomaly. As the sale remains intact, not being set aside, and the title remains with the auction purchaser, but possession may not be recoverable from the JDr if the relief is barred by limitation. The purchaser cannot even recover the amount deposited for buying the property as the sale is not set aside.

The JDr does not retain title to the property to deal with it. It seems the DHR's claim is not satisfied for the amount of sale consideration or the amount deposited by the JDr.

19. Apart from excluding the period of stay order, at this juncture, it is pertinent to refer Section 14 of the Limitation Act, which reads as follows:

**"14. Exclusion of time of proceeding bona fide in court without jurisdiction. —**

(1) xx xx xx xx xx

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) xx xxx xxx

*Explanation.*—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

20. Since the execution Court did not consider this aspect, the matter can be remanded to pass order afresh considering Section 14.

21. Accordingly, the Civil Revision Petition is allowed setting aside the impugned order and the matter is remanded to the execution Court for consideration on the point of limitation in the light of Section 14 of the Limitation Act, 1963, and pass order afresh within three (3) months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

**Sd/- M PRABHAKAR RAO**  
**ASSISTANT REGISTRAR**

//TRUE COPY//

  
**SECTION OFFICER**

To,

1. The I Additional Senior Civil Judge, Nellore, SPSR Nellore District.(with records if any)
2. One CC to Sri Kollu Rajasekhar, Advocate [OPUC]
3. One CC to Sri Harinadh Nidamanuri, Advocate [OPUC]
4. The Section Officer, V.R Section, High Court of Andhra Pradesh.
5. Three CD Copies

Pmg

vna



**HIGH COURT**

**DATED:28/01/2025**

**ORDER**

**CRP.No.627 of 2024**



**ALLOWING THE CIVIL REVISION PETITION  
WITHOUT COSTS**