

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

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MAIN CASE No: C.R.P(SR).No.44067 of 2024

PROCEEDING SHEET

SL. NO.	DATE	ORDER	OFFICE NOTE
01.	11.12.2024	<u>BSB, J</u> The present CRP(SR).No.44067 of 2024 is filed under Section 115 of C.P.C., aggrieved by order, dated 16.10.2024 and order, 26.11.2024 in E.P.No.36 of 2019 in O.S.No.05 of 2014 on the file of the Court of the X Additional District Judge, Krishna, Machilipatnam. The Office of the Registry of this Court raised an objection as follows:- “Please clarify and state as the how the C.R.P.S.R is entertainable under Section 115 of Civil Procedure Code, against the order, dated 16.10.2024 passed in E.P.No.36/2019 in O.S.No.5 of 2014 on the file of the X Additional District Judge, Machilipatnam. And the said E.P.No.36/2019 in O.S.No.5/2014 order, dated 16.10.2024 as there is no judicial order”. Then the learned counsel for the petitioner re-presented the C.R.P(SR) with the following endorsement:- “ On 16.10.2024 the execution Court	

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		ordered for proclamation and sell which is impugned in the present CRP. As such CRP is maintainable under Section 115 of CPC. The petitioner is 3rd party filed claim petition under Order 38 Rule 5 of CPC(sic Order 21 Rule 58 CPC). Without adjudication of the claim petition even leave petition is filed the very conduction sell is illegal as the present CRP is maintainable. The learned X ADJ, ordered proclamation and sell, which is judicial order as such the CRP is maintainable. If the scrutiny officer is not satisfied, kindly post the matter before the Hon'ble Court for "Order of Court". Having been not satisfied with the answer, the Registry placed the matter before this Bench. Heard learned counsel for the petitioner. Learned counsel for the petitioner submitted that the 3rd party filed petition under Order 21 Rule 58 CPC on 12.11.2024 in E.P.No.36 of 2019 and the same was numbered as E.A.No.43 of 2024; and that on the same date, a counter was filed by the DHR, however, without considering the same under Order 21 Rule 58 sub-rule 3 of CPC, the execution Court had erroneously proceeded	

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		further and passed order on 26.11.2024 by conducting sale of the subject property and therefore, the Revision Petitioner challenged both the orders, dated 16.10.2024 and 26.11.2024. He further submitted that the Revision Petitioner filed a petition seeking leave to challenge the said orders as he is a 3rd party to the orders, however, the office of the Registry had taken the objection and fails to duly consider the answer given, including saying that the order passed on 16.10.2024 is a judicial order as it is a proclamation of sale ordered by the Court. The orders dated 16.10.2024 and 26.11.2024, both being judicial orders and the Revision Petitioner filed a petition seeking leave to challenge the orders, having been satisfied with the arguments advanced by the learned counsel for the revision petitioner, the office objection is overruled. <u>B.S. BHANUMATHI, J</u> TM	