THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No. 3026 of 2015

ORDER:

The decree holder in E.P.No.60 of 2015 in O.S.No.23 of 2001 on the file of the Senior Civil Judge, Addanki is the petitioner in the present revision petition, filed under Section 115 of CPC.

2. The petitioner challenges the order dt. 13.07.2015 passed by the learned Senior Civil Judge, dismissing the above E.P., seeking attachment of the amount kept in the Sub-Treasury Office, Martur, belonging to the Respondent-Grama Panchayat, for realisation of the E.P., amount.

3. Heard Ms. Nimmagadda Revathi, learned counsel for the petitioner and Sri M. Brahma Reddy, learned counsel for the respondent and perused the material available on record.

4. The petitioner herein instituted O.S.No.23 of 2001 against the Respondent for recovery of the amount due under a works contract for the supply of electrical and public health material during the year 1997-98, and the said suit was decreed on 18.03.2011. For realisation of the said decretal amount, the petitioner filed E.P.No.60 of 2015 before the learned Senior Civil Judge, seeking attachment of the amount pertaining to the judgment debtor/Gram Panchyat lying in the Sub-Treasury Office, Martur, under DDO Code-07102202063. The respondent filed counter, resisting the said E.P. After hearing both sides, the learned Subordinate Judge, by way of the impugned order dt. 13.07.2015, dismissed the E.P. Questioning the validity and the legal sustainability of the said dismissal order, the present revision petition has been filed.

5. It is contended by the learned counsel for the petitioner that the impugned order is erroneous, contrary to law and opposed to the

very spirit and object of Order XXI of CPC. It is also submitted by the learned counsel for the petitioner that there is no prohibition for the attachment of the amount lying in the Treasury either under Sec.60 CPC or under any other provision of law. It is further argued that by referring to the irrelevant provisions of law, the Court below has erroneously dismissed the E.P., and Sec.79 of Panchayat Raj Act mandates the Gram Panchayat to pay the amounts.

6. On the contrary, it is vehemently contended by the learned Standing Counsel for the Gram Panchayat, Sri M. Brahma Reddy that there is no illegality nor there is any material infirmity in the impugned order, as such the present revision is liable to be dismissed. It is submitted that without the sanction of the District Collector, the amount lying in the Treasury cannot be withdrawn, for any purpose other than that for which the same is collected.

7. In this back ground, now the issue that emerges for consideration in the present revision is – "Whether the order under challenge is sustainable and tenable in law?"

8. In the instant case, there is absolutely no controversy with regard to the reality that a decree was passed on 18.03.2011 by the learned Senior Civil Judge, Addanki in O.S.No.23 of 2001 and the same has attained finality. For enforcement of the same, the decree holder/petitioner herein filed the present E.P., seeking attachment of the amount of the respondent, lying in the Sub-Treasury Office. The learned Senior Civil Judge, by way of the order under challenge in the present revision, dismissed the E.P., on the ground that the amounts of the respondent/judgment debtor, lying with the Treasury Office, cannot be attached, in the absence of the leave of the District Collector, in view of G.O.Ms.No.55, Panchayat Raj (Panchayats-VIII), dt. 19.01.1965.

9. It is contention of the learned counsel for the petitioner that the

G.O., prohibits the Gram Panchayat only from diverting the funds to any other purpose other than the purpose for which they are collected, and the said provision cannot be taken as a bar on attachment for execution of a decree passed by a Civil Court. While contending so, the learned counsel for the petitioner empathetically argues that the findings of the Court below are erroneous and contrary to law.

10. A perusal of the order under challenge clearly discloses that the learned Senior Civil Judge, while referring to the rule position in G.O.Ms.No.55, came to a conclusion that the amount specified is not attachable. It is to be noted at this juncture that in supersession of the Rules contained in G.O.Ms.No.55, Panchayat Raj, dt. 19.01.1965, the State Government framed the Rules called, 'The Andhra Pradesh Gram Panchayats (Earmarking of Funds) Rules, 2000', relating to earmarking of funds by the Gram Panchayats. Rule 2 of the said Rules stipulates as under:

"***Rule.2: Prohibition of diversion of special funds:-*** *A Gram Panchayat shall not without the previous sanction of the District Collector divert, even temporarily, any of the following special funds for any purpose other than that for which they are collected:*

(1) The proceeds of water tax levied under Sec.25 of the Andhra Pradesh (AA) Public Health Act, 1939 for the purpose of providing water supply in such area or part of the Gram Panchayat, it may be tax or additional tax levied under any head of taxation specified under the Andhra Pradesh Panchayat Raj Act, 1994, the net revenue therefrom is earmarked for expenditure on the execution, maintenance and improvement of water supply in the local area or part thereof within which it is levied.

(2) The proceeds of the special tax on agricultural lands levied under Section 60(3)(ii) of the Act for any of the following purposes, namely:

(a) Construction, maintenance, repair, extension or improvement of water works or drainage works;

(b) Lighting by gas or electricity;

(c) Construction of road, or a bridge or culvert;

(d) Construction of buildings intended to be used for cultural, educational or medical or other allied purposes;

(e) Protection of crops against depredation by cattle and petty thefts.

(3) The proceeds of the special tax on houses levied under Sec.71 of the Act for the purpose of providing for expenses connected with the construction, maintenance, repair, extension or improvement of water or drainage works or the lighting of the public street and public places and other similar works.

(4) Loan Funds.

(5) Special State grant sanctioned for specific purposes.

(6) Receipts derived from the sale of capital assets.

(7) Income from Endowments and Trusts.

(8) Deposits.

(9) Earmarked funds for Scheduled Castes, Scheduled Tribes, and woken."

11. The learned Senior Civil Judge lost sight of these new Rules and did not consider the issue whether the prohibition, as contained in the above mentioned Rules, applies to the Court proceedings also. The learned Judge did not appreciate the issue in the light of the provisions of Sec.60 CPC and other laws, if any, which imposes prohibition on attachment of certain specified amounts. In view of the above, this Court deems it appropriate and apt to send back the matter to the learned Senior Civil Judge, Addanki for fresh consideration, by setting aside the impugned order.

12. For the reasons stated above, the Civil Revision Petition is allowed, setting aside the impugned order dt. 13.07.2015 in E.P.No.60 of 2015 in O.S.No.23 of 2001 passed by the learned Senior Civil Judge, Addanki. Consequently, the E.P.No.60 of 20015 is restored to file and the learned Senior Civil Judge is directed to consider the same and pass appropriate orders afresh, in the light observations made supra, within a period of four weeks from the date of receipt of this order. Till such exercise is completed, the interim order passed by this Court in this revision petition on 30.07.2015 shall continue. As a sequel thereto, the miscellaneous applications, if any pending in

this revision petition, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 21..08..2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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