

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

CIVIL REVISION PETITION No.1098 of 2015

ORDER:

This Civil Revision Petition is filed under Section 115 of C.P.C. challenging the order dt.16-12-2009 in E.A.No.774 of 2009 in E.P.No.358 of 2007 in O.S.No.798 of 2006 of the Principal Junior Civil Judge, Proddatur.

2. The 1st respondent herein obtained a decree against 2nd respondent for recovery of money. To execute the said decree, he filed E.P.No.358 of 2007 under Order XXI Rule 52 CPC to attach a sum of Rs.60,781/- from out of amounts of Rs.9 lakhs lying in the petitioner bank to the credit of the account of 2nd respondent. The said amount was the balance of sale proceedings of a house belonging to 2nd respondent, which was auctioned by petitioner on 15-11-2007 for Rs.12,10,000/- for realization of the amount due to petitioner under a mortgage executed in its favour by 2nd respondent.

3. On 20-12-2007, the Executing Court passed the following order:

"Heard the petitioner, perused the records. Hence you are hereby directed not to attach an amount of Rs.60,781/- from out of the amount of Rs.9,00,000/- lying in Canara Bank towards balance sale proceedings of house bearing D.No.5/1283-3 auctioned on 15-11-2007 for Rs.12,10,000/- for realization of amount due to the bank under mortgage by the respondent/J.Dr until further orders of this Court".

4. Subsequently, it appears that 1st respondent realized that the word "not" in the first sentence referred to above was mentioned by mistake. So, on 22-09-2008, the 1st respondent

obtained another order in the said E.P. attaching the remaining amount in the bank account of 1st respondent in the petitioner bank.

5. This order was sent to the petitioner bank on 06-12-2008 to send the amount of Rs.60,781/- by 31-12-2008 and the matter was posted to 21-01-2009. On that day, the petitioner bank was called absent even though it had received the order sent by the Court on

12-12-2008 and therefore, a show cause notice was issued to petitioner bank on 21-01-2009. This was served on petitioner bank.

6. In the meantime, 1st respondent filed E.A.No.774 of 2009 on 17-11-2008 under Section 151 C.P.C. seeking fresh attachment of the sum of Rs.60,781/- from the petitioner bank.

7. In the said application, he contended that in spite of the order dt.22-09-2008 having been passed attaching the sum of Rs.60,781/- in the account of 1st respondent lying in the petitioner bank, the money was not sent by it and in the meantime, the

2nd respondent/J.Dr. is attempting to withdraw the said amount.

8. Counter was filed to this application by the Bank stating that the petitioner had received similar orders in other suits filed against 2nd respondent by other creditors also; that it had complied with the said orders; and it could not sent the amount of Rs.60,781/- to the Court below since no balance was available in the account of J.Dr. by the time its order dt.22-09-2008 was served on 12-12-2008 on it. It therefore contended

that its non-remittance of Rs.60,781/- was neither intentional nor wanton. It also stated that it addressed a letter dt.30-12-2008 furnishing all details of attachments made in several execution of suits to the Court below and copy of the same was filed along with the counter. It therefore prayed that further proceedings be dropped.

9. By order dt.16-12-2009, the Court below rejected the stand taken by the petitioner bank. It held that in the attachment order dt.20-12-2007 issued by it, it was no doubt mentioned that the petitioner, as a garnishee, should “not” attach the amount of Rs.60,781/-; that the Court had issued memo to the Field Assistant, who prepared the attachment order, the E.P. Clerk, who compared the said order and the Superintendent, who signed the attachment order calling for their explanations and they submitted their explanations that by oversight, the word “not” was mentioned in the said order. It therefore observed that they are not responsible for the loss caused to the D.Hr/1st respondent. It held that there was a direction to the attach the amount in order dt.20-12-2007 and it was the duty of the petitioner bank to approach the Court, but it had not sent any letter that it had not attached the E.P. amount lying with it, since there was no order to attach the amount. It further held that the petitioner might have misplaced the order or forgotten the order of attachment made by the Court in E.P and failed to send the amount to the Court while sending the amount in other Execution Petitions to the respective Courts. It therefore directed the petitioner bank to pay the E.P. amount of Rs.60,781/- to 1st respondent.

10. Challenging the same, this Revision is filed.
11. Heard Sri Deepak Bhattacharjee, learned counsel for petitioner and Sri V.V.Lakshmi Narayana, learned counsel for 1st respondent/D.Hr.
12. The learned counsel for petitioner contended that admittedly the order dt.20-12-2007 in E.P.No.398 of 2007 in O.S.No.798 of 2006 of the Court below directed the petitioner “not” to attach the amount of Rs.60,781/- lying in the account of 2nd respondent in its branch at Proddatur. Therefore, the petitioner had not attached the said amount. By the time order dt.22-09-2008 issued by the Court in the said E.P. to attach the said amount was served on it on 12-12-2008, no amount was available in the account of 2nd respondent. He relied upon the bank statement of A/c.No.ODCC 7055 of the 2nd respondent for the period from 01-01-2007 to 31-12-2009 in this regard. The said statement indicates that there were more than one prohibitory orders for attachment of amounts lying in the above account, the petitioner bank had complied with all such orders, and that by 10-11-2008 the balance in the said account became Nil. He contended that admittedly the attachment order dt.22-09-2008 was served on the petitioner bank on 12-12-2008, by which time there was no balance in the said account and that was why no amount could be sent to the Court in E.P.No.353 of 2007. He contended that for the mistake committed by the Field Assistant, E.P. Clerk and Superintendent of the Court by mentioning the word “not” in the order dt.20-12-2007, the petitioner bank cannot be penalized. He also submitted that the

Court below erred in exonerating these employees from any penalty and making the petitioner to pay for it as if the petitioner had committed some mistake.

13. The learned counsel for 1st respondent, however, contended that because of the failure of the bank to attach the amount of Rs.60,781/- in spite of the direction dt.20-12-2007, the 1st respondent has been deprived of the said amount. He therefore contended that the order passed by the Court below is not liable to be interfered with.

14. I have noted the submissions of both sides.

15. There is no dispute that an order was passed under Order XXI Rule 52 CPC in E.P.No.353 of 2007 on 20-12-2007 directing the petitioner bank/garnishee “not” to attach the amount of Rs.60,781/- lying to the credit of the above referred account of the 2nd respondent in the petitioner bank. It may be that the word “not” was wrongly mentioned in the said order. But it is the responsibility of the

1st respondent or his counsel to discover this mistake immediately and take steps to get it corrected. But they did not do so. Only on

22-09-2008 a fresh order of attachment of this amount of Rs.60,781/- was obtained by 1st respondent. The 1st respondent did not ensure that even the said order would be served on petitioner bank immediately. It was served on petitioner bank only on 12-12-2008, by which date the balance in the above account of 2nd respondent became Nil since all the amounts were either withdrawn by 2nd respondent or were sent to the

respective Courts from which prohibitory orders were received by the petitioner bank. By no stretch of imagination, can the officials of the petitioner bank be blamed for this.

16. In my opinion, it is the negligence of 1st respondent and his counsel in the trial Court which has created this situation. Had they realized the mistake in the order dt.20-12-2007 and got it corrected immediately, this situation would not have arisen.
17. I also find it strange that the trial Court found that the Field Assistant, who prepared the attachment order on 20-12-2007, the E.P. Clerk, who compared the said attachment order and the Superintendent, who signed it, not responsible for the loss or damage caused to 1st respondent/D.Hr. It is their negligence, which has caused this situation.
18. The reasoning of the Court below that the petitioner bank, after receiving attachment order dt.24-12-2007 should have approached the trial Court and its failure to do so, or failure to send a letter to Court by it that it had not attached the amount mentioned in the said order, should result in the petitioner bank being held responsible for the loss caused to 1st respondent, is clearly perverse. When an order directs a party not to do something, in compliance with the said direction, the party would naturally not do anything. There is no obligation on the said party to inform the Court that it had not done anything.
19. The further observation of the Court below that the petitioner/garnishee might have misplaced the order dt.24-12-2007 or forgotten the same and failed to send the amount to the Court, is equally perverse. When the order dt.20-12-2007

directed the petitioner bank not to attach the amount of Rs.60,781/- in the bank account of 2nd respondent, there was no question of petitioner bank attaching the said amount and sending it to the Court.

20. Having regard to these reasons, the impugned order is clearly an erroneous exercise of the jurisdiction vested in the trial Court and deserves to be set aside. It is accordingly set aside. The Court below is directed to initiate disciplinary proceedings against the concerned Field Assistant, who prepared the attachment order

dt.20-12-2007, the E.P. Clerk, who compared the said attachment order and the Superintendent, who signed it for their negligence in issuing an incorrect order, fixing responsibility on them, collect the amount of Rs.60,781/- from them and pay it to 1st respondent/D.Hr.

21. The Civil Revision Petition is allowed with the above directions. No costs.

22. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-03-2015

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