THE HON'BLE SRI JUSTICE K.C.BHANU

CIVIL REVISION PETITION NO.1155 OF 2015

ORDER:

This revision is directed against the order, dated 30-10-2014 in E.P.No.410 of 2012 in O.S.No.57 of 2012 on the file of the Principal Senior Civil Judge, Guntur.

2. The above Execution Petition was filed by the respondent herein (D.Hr.) under Order XXI Rule 48 CPC to attach the retirement benefits of the petitioner herein (J.Dr.) lying in the hands of the garnishee for the purpose of realizing the fruits of the decree and the said petition was allowed. Hence, this revision.

3. Learned counsel for the petitioner herein (J.Dr.) contended that the retirement benefits like pension and gratuity cannot be attached and hence, he prays to set aside the impugned order. He relied on a decision reported in **RADHEY SHYAM GUPTA V PUNJAB NATIONAL BANK AND ANOTHER** , wherein it was held thus:

> "We also agree with Ms.Shobha that even after the retrial benefits, such as pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by proviso (g) to Section 60 (1) of the Code. Except for the decision in *Jyoti Chit Fund and Finance case*, where a contrary view was taken, the consistent view taken thereafter supports the contention that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retrial benefits paid to the appellant"

From the above decision, it is clear that retirement benefits like pension and gratuity do not lose their character and continued to be covered by proviso (g) to Section 60 (1) of the CPC.

4. He further relied on a decision reported in **GUDAPATI HANUMAIAH V Y.LAKSHMINARASAMMA AND OTHERS** , wherein it was held thus:

> "In view of the above provisions under Section 60 (1) (g) and Sections 4 (1) and 13 of the Payment of the Gratuity Act, and also in view of the

> foregoing discussion and also the judgment of the learned single Judge of this Court, I am of the view that the gratuity, which became payable to the judgment-debtors owing to the death of the Government servant, is exempted from attachment in execution of a decree."

5. He further relied on a decision reported in **K.MURUGESAN V E.ULAGANATHAN AND ANOTHER** , wherein it was held thus:

> "The settled law on this subject is that retrial benefits are not liable for attachment not only while they were with the employer concerned, but also when it passes to the hands of the employee after retirement, since such benefits will not lose their character as retrial benefits entitling them to be clothed with exemption under Section 60 (1) (g) of CPC."

There is no dispute about the law laid down. The order impugned would go to show that garnishee order was issued to attach the amount of the J.Dr lying with the credit of the garnishee. In the entire counter filed by the J.Dr. it is nowhere stated that the garnishee order was issued with regard to attachment of retirement benefits such as pension, gratuity and provident fund. No specific plea has been taken in the counter filed by the J.Dr to show that the order of attachment issued to the garnishee comes within the purview of Section 60 (1) (g) of CPC. In the absence of any material, it cannot be said that the order of attachment issued to the garnishee comes within the purview of Section 60 (1) (g) of CPC. In the absence of factual foundation, the contention of the learned counsel for the petitioner (J.Dr.) cannot be accepted. Therefore, the revision is devoid of merit and is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

K.C.BHANU, J

DATED: 27-03-2015

Hsd