THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4209 of 2014

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.12.09.2014 in E.P.No.35 of 2014 in O.S.No.264 of 2011 on the file of Principal Senior Civil Judge, Kovvur.

2. The petitioner herein is the Judgment-Debtor in the above suit.

3. The said suit was filed by respondent against petitioner for recovery of money, and it had been decreed on 27.12.2011.

4. The decree was not challenged and it attained finality.

5. Pending suit, an I.A.No.1306 of 2011 had been filed by respondent seeking attachment of a sum of Rs.4,24,000/- belonging to petitioner lying with Andhra Pradesh State Road Transport Corporation Employees' Thrift Credit Co-operative Society Limited, (for short, 'the Society') which was referred to as Members Retirement Deposit Fund [MRDF], (for short, 'MRDF').

6. On 10.10.2011, an order of attachment of the said amount was granted.

7. Thereafter, the suit was decreed on 27.12.2011. Consequent to the decree in the suit, the said I.A. was closed. While closing the said I.A. by a docket order dt.03.10.2012, the Senior Civil Judge, Kovvur observed that :

> *"Since the main suit is decreed on 27.12.2011. Letter received from Garnishee stating that contribution made by the members are compulsory and not attachable by virtue of judgment reported in 1976 (2) APLJ Page No.11 DNC . Further Section 39 of A.P. Co-operative Societies Act, 1964.*
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> *Hence as per garnishee letter, petition is closed."*

8. After the decree was passed, the respondent filed E.P.No.35 of 2014 under Order 21 Rule 46 C.P.C. praying to send for the amount which had already been attached in I.A.No.1306 of 2011 from the above Society.

9. Counter-affidavit was filed by petitioner contending that I.A.No.1306 of 2011 itself had been closed on 03.10.2012 and the amount of Rs.4,24,000/- with the above Society is exempt from attachment under Section 39 of the Andhra Pradesh Co-operative Societies Act, 1964 (hereinafter referred to as, 'the Act').

10. By order dt.12.09.2014, the objection of the petitioner was rejected and the I.A.No.1306 of 2011 was allowed. The Court below held that the decision in 1976 (2) APLJ 11, cited on behalf of petitioner, has no relevance because the said judgment related to attachment under the provisions of the Provident Fund Act and Pensions Act and the amounts attached in I.A.No.1306 of 2011 do not pertain to the said category. It therefore directed the garnishee to send the said amount to the Court.

11. Challenging the same, the present Revision is filed.

12. Heard Sri P. Rajesh Babu, counsel for petitioner; and Sri M.R.S. Srinivas, counsel for respondent.

13. The Counsel for petitioner canvassed two contentions viz., (1) that the amount of Rs.4,24,000/- deposited by petitioner with the above Society is in the nature of a contribution to the said Society which is exempt from attachment under Section 39 of the Act; and that in a judgment reported in **Valaparla Bhaskara Rao v. Chegu Madhava Rao**[1], this Court had held that share of a judgment-debtor in the capital of SBI Employees' Co-operative Credit Society is not liable for attachment; and (2) that since the very I.A.No.1306 of 2011 was closed accepting a letter dt.24.10.2011 of the Society addressed to the Court of the Principal Senior Civil Judge, Kovvur, there is no question of now sending for the said amount from the said Society.

14. On the other hand, the counsel for respondent refuted the above contentions. He pointed out that the amount of Rs.4,24,000/-, admittedly, is in the nature of a recurring deposit made by petitioner from out of his salary every month so as to provide a lumpsum at the time of retirement of petitioner from the service of APSRTC; therefore, it is not in the nature of a Provident Fund or a Pension; that it has to be taken to be in the nature of a recurring deposit only in any financial institution, earning interest to the depositor; and therefore, Section 39 is not at all attracted.

15. As regards the second contention of the counsel for petitioner, counsel for respondent pointed out that the main reason why I.A.No.1306 of 2011 had been closed by the Principal Senior Civil Judge, Kovvur was that the suit was decreed on 27.12.2011, and merely because the court referred to the letter dt.24.10.2011, said to have been addressed to it by the above Society, it cannot be said that, that is the basis for closing the I.A., particularly when the Docket Order dt.03.10.2012 does not indicate any application of mind by the Principal Senior Civil Judge, Kovvur to the legal issue raised by the Society in its letter dt.24.10.2011.

16. I have noted the submissions of both sides.

17. The petitioner was admittedly a member of the above Society i.e., [a Society registered in 1952 under the then Hyderabad Co-operative Societies Act, *1323 Fasli*].

It may be that applicable provisions of law to the said Society as on date is the Andhra Pradesh Co-operative Societies Act, 1964.

18. Section 39 of the Act states :

> *"39. **Share or interest, etc., not liable to attachment** : -*
> *The share or interest, of a member in the capital of a society or of an employee in the provident fund established under Section 49 of the contribution made by a member or past member or from the estate of a deceased member or by any officer or former officer under Section 66, or the reserve fund of a society (or the bad debts reserve of a Society) or the provident fund of its employees invested under Section 46, shall not be liable to attachment or sale, under any decree or order of a Court, in respect of any debt or liability incurred by such member, or officer; and an official assignee or a receiver under any law relating to insolvency shall not be entitled to or have any claim on such share, interest, contribution or fund."*

19. It is pertinent to note that the said provision occurs in Chapter V which deals with rights and privileges of Societies. Therefore, the primary purpose of provision like Section 39 is to protect the rights of a Society and to ensure that any amount contributed either as share, interest or other contribution to a Society towards its capital, is not attached in execution of any decree of a Court. The said provision is not intended to benefit a depositor in a thrift deposit scheme in a Society like the Andhra Pradesh State Road Transport Corporation Employees' Thrift Credit Co-operative Society Limited, which deposit is in the nature of a recurring deposit by a member of a portion of his salary for his enjoyment at the time when he retires from service.

20. The said Society, admittedly, is an entity, distinct and separate from the Andhra Pradesh State Road Transport Corporation. Any deposit made by petitioner with the said Society cannot be termed to be either a share or interest of a member like petitioner in the capital of a Society, or a contribution made by a member to the capital of the Society, since admittedly his deposit was to be returned on his retirement with interest.

21. The decision in **Valaparla Bhaskara Rao** (1 supra), relied upon by the counsel for petitioner has no application to the present case, because in that case, what was sought to be attached was the share of a member in the capital of the SBI Employees' Co-operative Credit Society, Guntur, which is clearly prohibited by Section 39 of the Act. Therefore, the reliance placed by the counsel for petitioner in Section 39 is totally misplaced.

22. Even the decision in **Union of India v. Jyoti Chit Fund and Finance and others**[2] relied upon by the counsel for petitioner is untenable because the said case related to attachment of Provident Fund contributions and pensionary benefits of government servants which continue till they are received by the employee; and in that decision it was observed that attachment is possible only after such amounts are paid to the government servant, who is entitled to them on retirement or otherwise.

23. Since the deposit every month from the salary of petitioner in the MRDF in the said Society cannot be termed to be a contribution towards Provident Fund, the said decision also has no application to the present case.

24. Coming to the other contention raised by the counsel for petitioner regarding the closure of I.A.No.1306 of 2011 is concerned, admittedly the said I.A. had been filed under Order 38 Rule 5 r/w Section 151 C.P.C. pending suit to attach the amount of Rs.4,24,000/- lying in the MRDF deposit amount with the above Society. The Senior Civil Judge, Kovvur had issued an interim attachment pending suit on 10.10.2011 and closed I.A.No.1306 of 2011 on 03.10.2012 after the suit was decreed on 27.12.2011. Although in the docket order dt.03.10.2012, there is a reference to the letter dt.24.10.2011 addressed by the Society to the Superintendent of the said Court pointing out the question of non-attachability of the said contribution, a reading of the order indicates that the Court merely recorded the contents of the letter, and the main reason for closing the I.A. appears to be that the suit itself was decreed on 27.12.2011. The Court also has not applied its mind and does not appear to have accepted the legal proposition mentioned in the said letter about non-attachability of the

MRDF amount. Therefore, the mere fact that such I.A.No.1306 of 2011 is closed probably on the premise that the suit itself had been decreed, does not entitle the petitioner herein to contend that the said amount cannot be attached in execution proceedings.

25. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.

26. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-09-2015
Ndr/*

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[1] 1993 (1) ALT 404
[2] 1976 (2) APLJ Pg.11 (S.C.)