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

CIVIL REVISION PETITION No.4832 of 2010

ORDER:

This Civil Revision Petition is filed under Section 115 CPC challenging the order dt.16-06-2010 in E.P.No.260 of 2009 in O.S.No.1883 of 2006 of the III Additional Junior Civil Judge, Vijayawada.

2. The 1st respondent herein had filed the above suit for recovery of money against petitioners and others, and the said suit was decreed on 10-04-2008 making all the judgment debtors jointly and severally liable.

3. After obtaining the decree, the 1st respondent filed E.P.No.260 of 2009 seeking attachment of the salaries of petitioners as well as respondent Nos.2 to 4.

4. This application was opposed by petitioners herein contending that their liability is coextensive with that of principal debtor and unless steps are taken against the principal debtor also, the decree cannot be executed against them.

5. By order dt.16-06-2010, the Court below rejected the said contention and allowed the E.P. It also noted that 1st respondent had filed another E.P. against the principal debtor and therefore, there is no impediment to proceed against the petitioners.

6. Questioning the same, this Revision is filed.

7. The learned counsel for petitioners contended that the Decree Holder should proceed against the principal debtor first and then

only proceed against the other Judgment Debtors including the petitioners.

8. This contention cannot be accepted. In **State Bank of India Vs. Messers Indexport Registered and others**, the Supreme Court held that if a composite decree which is both a personal decree as well as a mortgage decree was passed without any limitation on its execution, the decree holder, in principle, cannot be forced to first exhaust the remedy by way of execution of the mortgage decree alone and told that only if the amount recovered is insufficient, he can be permitted to take recourse to the execution of the personal decree. It held that if on principle a guarantor could be sued without even suing the principal debtor, there is no reason, even if the decretal amount is covered by the mortgaged decree, to force the decree-holder to proceed against the mortgaged property first and then to proceed against the guarantor. The principle laid down in the said decision would clearly apply to the present situation even though the decree here is not a mortgage decree. So it is not open to petitioners to contend that D.Hr. must not proceed against them till recoveries, to the extent possible, are made from principal borrower.

9. The learned counsel for petitioners however contends that if amounts are still due after proceeding for execution against the petitioners, the petitioners may be granted two months time to clear the dues. This request is agreed to by the learned counsel for

   1st respondent to the extent of balance amounts still to be recovered by 1st respondent/Decree-holder.

10. In view of the above submissions, the petitioners are granted two

months time to satisfy the decree to the extent of recoveries not made from the principal debtor by 1st respondent. If they do not satisfy the decree in this time, the C.R.P. will stand dismissed and the impugned order will revive.

11. The Civil Revision Petition is disposed of accordingly. No costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 02-06-2015

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