

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.618 OF 2015

JUDGMENT:

The Garnishee in E.A. No.114 of 2008 in E.P. No.79 of 2006 in O.S. No.184 of 2001 on the file of the Court of Senior Civil Judge at Khammam, (for short, 'the Executing Court'), preferred this Appeal challenging the order passed by the Executing Court on 08.07.2015; wherein, the Execution Application filed by the Decree Holder was allowed holding that Sri Y.B. Krishna Rao, the then Garnishee, disobeyed the order of warrant of attachment issued by the Executing Court and made him personally liable to pay the warrant amount of Rs.1,03,709/- to the Decree Holder while permitting the Decree Holder to take steps to recover the warrant amount from Sri Y.B. Krishna Rao.

The 1st respondent-decree holder herein obtained decree in O.S. No.184 of 2001 against the 2nd respondent-judgment debtor, P. Mallikarjuna Rao, on 13.12.2002, for recovery of Rs.1,83,090/-; subsequently, filed Execution Petition No.79 of 2006 for attachment of Rs.1,03,709/- from his retiral benefits *i.e.*, leave encashment amount and, accordingly, got the order of attachment, under Order XXI Rule 48 of C.P.C., in his favour on 28.04.2006; which was served on the then garnishee and drawing and disbursing officer, appellant herein, for deducting the decree debt payable to the 1st respondent-decree holder from the leave encashment benefit of the 2nd respondent-judgment debtor and send the same to the credit of E.P. No.79 of 2006, towards discharge of the decree debt; In spite of receiving the same through the Court Bailiff, he disobeyed the order of the Executing Court and, paid entire retiral benefits to the 2nd respondent-judgment debtor.

Aggrieved thereby, the 1st respondent-decree holder filed

Execution Application No.114 of 2008, under Order XXI Rule 46(B) and Rule 48(2) and (3) of C.P.C., to issue show-cause notice to the garnishee calling upon him to pay the amount covered by the warrant of attachment, which was served on the then garnishee, appellant herein, on 03.05.2006. Consequent upon issuance of notice, Sri K. Mallesh, the present Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad, filed explanation contending that the then Senior Assistant by name Ch. Laxmana Chary, received the garnishee order but did not handover the same to him. Subsequently, the 2nd respondent-judgment debtor retired from service and the then Deputy Executive Engineer is now working as Deputy Executive Engineer, R.W.S. & S Sub-Division, Peddapally, Karimnagar. After filing explanation by the present Deputy Executive Engineer, the trial Court ordered notice to the then Drawing and Disbursing Officer *i.e.*, the appellant herein, calling upon him to appear before the Court and explain as to why the leave salary payable to the 2nd respondent-judgment debtor was not attached and as to why action should not be taken for disobeying the order of warrant of attachment passed by the Court.

In obedience of the notice, Sri K. Mallesh, who is presently working as Deputy Executive Engineer, Palakurthi, Warangal appeared before the Executing Court and submitted that no such information was received by him and filed counter contending that he joined in the office of Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad, on 01.09.2008; transferred to Palakurthi in the year 2012. He further submits that a copy of the order dated 10.10.2007 was served in the office on 07.11.2007 which bears the endorsement that the 2nd respondent-judgment debtor, had retired from service on 30.04.2006. the order dated 10.10.2007, sent by the Executing Court was served in the office of garnishee on 07.11.2007 by which the date the 2nd respondent-judgment debtor had already

withdrawn the leave encashment amount and he was not the officer who worked at the relevant point of time. judgment debtors 1 to 5 are the residents of Mahabubabad and 6th Judgment Debtor is a resident of Krishna District and Garnishee is also not a resident of Khammam.

Again on 26.11.2013, Sri K. Mallesh, appeared before the Court and filed a memo informing that Sri Y.B. Krishna Rao, was the then Deputy Executive Engineer, on the date of issuance of notice in E.P. No.79 of 2006 on 03.05.2006 and he is presently working in the office of Panchayat Raj Sub-Division, Mahabuibabad. In pursuance of the information submitted by Mr. K. Mallesh, the Executing Court issued notice to Mr. Y.B. Krishna Rao, who in turn appeared before the Court through his counsel, filed counter denying material allegations *inter-alia* contending that, on verification he came to know that the Executing Court passed the order, which was served on the then Deputy Executive Engineer on 03.05.2006 for attachment of the retiral benefits payable to the 2nd respondent-Judgment Debtor, which was received by the then Senior Assistant in the Office of garnishee, on 03.05.2006 but it was not brought to his notice. Sri Ch. Laxmana Chary, the then Senior Assistant, who received the attachment order is no more and Mr. Y.B. Krishna Rao, has no knowledge about the same and Mr. Y.B. Krishna Rao worked as Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad, from 30.05.2006 to 18.12.2007 and he received another notice dated 10.10.2007, which was served on 07.11.2007 (garnishee order) and he endorsed on the said notice that the 2nd respondent-judgment debtor had already retired from service and he had no information about the attachment warrant.

It is further contended that the office of Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad does not fall under the territorial jurisdiction of the Executing Court and prayed to relieve

him from the execution proceedings.

The Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad, filed counter admitting service of attachment of warrant on 03.05.2006 on the garnishee; as per the record available in the office, it is found that the leave encashment bill of 2nd respondent-judgment debtor herein for Rs.1,14,461/- was passed on 04.12.2006 *vide* voucher No.236, dated 20.12.2006 in the Office of Pay and Accounts Officer, Hanumakonda and the 2nd respondent-judgment debtor acknowledged receipt of the same on 22.12.2006 by putting his signature under acknowledgment with regard to receipt of the cheque. It is further contended that at the time of service of warrant of attachment on garnishee on 03.05.2006, Mr. Y.B. Krishna Rao, was the Deputy Executive Engineer in the Office of Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad, which was not under the territorial jurisdiction of the Executing Court. Hence, the Executing Court has no jurisdiction to order attachment of the leave encashment amount of 2nd respondent-judgment debtor and prayed to dismiss the Application.

During course of enquiry, no witnesses were examined and no documents were marked on either side but upon hearing argument of both the counsel, the Executing Court framed the following points for consideration:

1. Whether the garnishee has violated the orders of warrant issued by this court and whether the garnishee is personally liable to pay the warrant amount, as prayed for?
2. To what relief?

Upon hearing argument of both the counsel, the Executing Court allowed the Application by passing the following order:

“In the result, the application is allowed with costs, holding that Sri Y.B. Krishna Rao, the then Garnishee, has disobeyed the orders of warrant of attachment issued by this court, he is personally liable to pay the warrant amount of Rs.1,03,709/- (Rupees one lakh three thousand seven hundred and nine only) to the decree-holder and that the decree-holder is entitled to take steps for recovery of the said amount from him.”

Aggrieved by the impugned order and decretal order, the instant Appeal is preferred by Mr. Y.B. Krishna Rao, the then garnishee, raising several contentions almost reiterating the contentions raised by him in the counter filed in E.A. No.114 of 2008 and mainly contended that the order of notice dated 10.10.2007 was received on 07.11.2007 and the same was sent to the office of 2nd respondent-judgment debtor and that apart by the date of issuance of warrant of attachment, the 2nd respondent-judgment debtor has already retired from service on 30.04.2006, received entire retiral benefits. Therefore, the impugned order passed by the Executing Court making the appellant liable for payment of the decretal amount is illegal and without any legal basis; It is further contended that the office of the 1st respondent-decree holder is not within the territorial limits of the Executing Court; on this ground alone the order passed by the Executing Court is illegal and prayed to allow the Appeal setting-aside the order under challenge.

During course of argument Sri Y. Rama Rao, learned counsel appearing on behalf of the appellant-garnishee, would contend that the order of attachment for retiral benefits from the judgment debtor's office must be within the territorial limits of the Court; otherwise, the Court cannot pass an order of attachment but the Executing Court without considering the specific contention raised before it, passed the impugned order; in support of his contention, placed reliance on a decision of this Court in ***Aditya Electronics, Hyderabad Vs. A.S. Impex Limited New Delhi and others***^[1]. He further contended that

under Order XXI Rule 46(B) of C.P.C., the role of the Executing Court is only to recover the amount but no where in enforcement of garnishee order, arrest of the garnishee is provided for and in support of it, placed reliance on a decision of this Court in ***Zangam Vara Prasad and another Vs. Uppalapati Krishna Kumar and another***^[2].

Per contra, Sri P. Durga Prasad, learned counsel appearing on behalf of the 1st respondent-decree holder, would contend that the restriction about the attachment of salary outside the territorial limits of the Executing Court has no application to the Government employees, placed reliance on a decision of this Court in ***Janapati Jaipal Reddy Vs. Sannihita Chit Fund Private Limited, Karimnagar District and others***^[3], and as such there is no error in the order passed by the Court and finally prayed to dismiss the Appeal confirming the order passed by the trial Court.

Considering rival contentions and perusing the order under challenge, the sole point that arises for consideration is:

Whether the Executing Court passed the order under challenge in accordance with the procedure prescribed under Order XXI Rule 46(A) to (I) of C.P.C? If not, is it liable to be set-aside?

POINT: Order XXI deals with the procedure for execution of various decrees. Order XXI Rule 48 of C.P.C. deals with attachment of salary or allowances of servant of the Government or Railway Company or local authority. In the present case, the 1st respondent-decree holder obtained a decree against the respondents 2 to 6-judgment debtors for recovery of the amount and it became final. Later, the 1st respondent-decree holder filed E.P. No.79 of 2006 for recovery

of the amount by way of attachment of retiral benefits of the 2nd respondent-judgment debtor, P. Mallikarjuna Rao, wherein the Executing Court issued warrant of attachment directing the then Drawing and Disbursing Officer to withhold the decretal amount and send the same to the credit of the E.P. No.79 of 2006 and the said notice was served in the office of Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad on 03.05.2006. As seen from the endorsement made on the reverse of the order of attachment, it is clear that the then Senior Assistant received the same but the main contention of the appellant-garnishee, is that the order was received by the then Senior Assistant but did not bring the same to his notice and it is found in the office record. The order dated 03.05.2006 passed by the Court clearly shows that an amount of Rs.1,03,709/- has to be attached out of the leave encashment benefit payable to the 2nd respondent-judgment debtor.

The 2nd respondent has been retired from service on 30.04.2006. Despite ordering attachment of an amount of Rs.1,03,709/- from the leave encashment payable to the 2nd respondent-judgment debtor, the then Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad, did not retain the amount, obviously for different reasons. On the other hand, it is contended by the then Deputy Executive Engineer and present Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad that the garnishee order was sent on 07.11.2007, but the leave encashment amount was already paid to the 2nd respondent-judgment debtor on 10.10.2007. Thus, the garnishee order was received subsequent to payment of the leave encashment amount to the 2nd respondent-Judgment debtor. In fact, the attachment order in E.P. No.79 of 2006 was passed on 03.05.2006 and on the same day, it was received by the then Senior Assistant. Receipt of the same is not in dispute but failure to retain the amount attached by the Court is a clear violation of the order of the

executing Court. The report of the Bailiff, who served attachment warrant, also disclosed that the warrant was duly served on the concerned official, who was authorized to receive, in the office but the Deputy Executive Engineer wantonly failed to withhold the attached amount, though the attachment warrant dated 28.04.2006 was received by the Senior Assistant in the office of Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad on 03.05.2006.

According to Order XXI Rule 46 of C.P.C., separate procedure is prescribed for attachment of debt, share and other property not in possession of judgment debtor; Order XXI Rule 46-A contemplates issuance of notice calling upon the garnishee liable to pay debt of the judgment debtor and to pay the same into Court to the credit of the Execution Petition on the application of Decree Holder. On receipt of such order, if the garnishee pays the amount into Court due from him to the judgment debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree holder towards satisfaction of the decree and costs of the execution. Here, leave encashment amount payable to the 2nd respondent-judgment debtor was attached long prior to payment by the garnishee, since the attachment warrant was received by the Senior Assistant on 03.05.2006; however, in utter disregard of the order of attachment warrant, the garnishee paid the leave encashment amount to the 2nd respondent-judgment debtor on 10.10.2007; thereupon, again a garnishee order 10.10.2007 was sent to the Deputy Executive Engineer and the same was received on 07.11.2007 but no purpose was served. Thus, there is a *prima-facie* evidence to conclude that the then Deputy Executive Engineer, R.W.S. & S Sub-Division, Mahabubabad, violated the order of the Executing Court to satisfy the decretal amount and also failed to comply the show-cause notice issued under Order XXI Rule 46-A and the order passed by the Executing Court under Order XXI Rule 46-B of C.P.C.,

which is under challenge in this Appeal.

The State Amendment to Order XXI Rule 46-A to I of C.P.C. and the State of Andhra Pradesh adopted the amendment of C.P.C. of State of Madras. Even according to the Central Act, Order XXI Rule 46-C of C.P.C., where the garnishee disputes his liability, the Court may order that any issue or question necessary for determining his liability shall be tried as if it were an issue in a suit, and upon determination of such issue shall pass such order upon the notice as it may think fit. At the same time, the State Amendment to Order XXI Rule 46-C, says that if the garnishee disputes his liability, the Court instead of making such order may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon the determination of such issue shall pass such order upon the notice as it may think fit; the State Amendment and Central Act are almost identical.

Even according to Rule 41-G of Andhra Pradesh Amendment, an order passed under Rules 46-B, 46-C or 46-F against the garnishee shall be executable as if it were a decree of the Court in favour of the decree holder but in the present case, the Executing Court did not adhere to order XXI Rule 46-C both Central or State Amendments referred *supra* and did not frame any issue or question necessary for determination and tried the issue as if it is an issue in the suit.

In view of the language used under Order XXI Rule 46-C of Central Act or State Amendment, when the garnishee disputes his liability, it is obligatory on the part of the Court to frame an issue or a question and try the same as if it is an issue in the suit but the Executing Court did not adhere to the procedure prescribed under Order XXI Rule 46-C of Central Act or A.P. Amendment.

When a specific procedure is prescribed under the procedural

law to frame an issue and try the same, the Court is bound to adhere to the procedure; otherwise, the parties will have no opportunity to adduce evidence in support of their pleas raised both in the Petition filed by the decree holder and the pleas raised by the garnishee in the counter.

In the present case, no evidence was recorded and no documents were marked on either side; no question or issue regarding the territorial jurisdiction of the Court and willful violation of attachment order was framed and tried before hearing argument of the counsel. In such case, the procedure adopted by the Executing Court is in utter disregard and deviation, totally contrary to the procedure prescribed under the C.P.C. which did not afford any opportunity to adduce evidence by both the parties in support of their contentions. Thus, the procedure adopted by the Executing Court is *ex-facie* erroneous; consequently, the order under challenge is liable to be set-aside.

Hence, by exercising power under Order XLI Rule 23-A of C.P.C. the order is set-aside and the matter is remanded to the Executing Court with a direction to adhere to the procedure prescribed under Order XXI Rule 46-C of C.P.C., as amended by the A.P. Act, and frame an issue or question, try the same as if it is an issue in the suit by affording reasonable opportunity to both the parties and pass appropriate orders thereon within a period of six (6) months from today and, accordingly, both the parties are directed to appear before the Executing Court on 23.11.2015.

Though the parties raised several contentions with regard to territorial jurisdiction and liability of the garnishee *etc.*, but no separate finding is recorded on those aspects as the procedure followed by the Executing Court is illegal. Hence, both the parties are at liberty to raise such contentions, which are legally permissible to them including the contentions urged before this Court.

The observations, if any, made hereinabove are limited for the purpose of deciding the present Appeal and they have no bearing in deciding the Execution Application by the Executing Court. Therefore, the Executing Court is directed to decide the matter, afresh, in accordance with law, un-influenced by any of the observations or findings made hereinabove, by restoring the Execution Application to its original number in the Register of Applications and afford reasonable opportunity to both the parties, as contemplated under order XXI Rule 46-C of C.P.C. and decide the application.

Accordingly, with the above direction, the Appeal Suit is disposed of.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 29-10-2015.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[\[1\]](#) 2004 (2) ALD 779
[\[2\]](#) 2011 (3) ALD 594
[\[3\]](#) 2008 (4) ALD 735