

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

Civil Revision Petition No.4912 of 2014

ORDER:

This Civil Revision Petition is filed challenging the order dt.07.05.2013 in E.A.No.420 of 2012 in EP.No.89 of 2011 in O.S.No.501 of 2003 of the I Additional Junior Civil Judge, Tanuku.

2. The petitioner herein is the 5th J.Dr. in the above suit. The said suit was filed for recovery of money by the 1st respondent against the petitioner and other respondents and it had been decreed.

3. The petitioner herein was employed as a Computer Operator in Bank of Baroda in Rajahmundry. The respondent therefore filed E.P.No.89 of 2011 against the petitioner and his employer seeking attachment of a sum of Rs.87,783/- from the retirement benefits i.e., leave salary and P.F. to the credit of the petitioner.

4. No counter affidavit was available on record.

5. Initially conditional attachment was directed on 06.05.2011 and both, the petitioner as well as his employer were served on 20.05.2011. On 24.08.2011, the retirement benefits of the petitioner were attached and the EP was closed.

6. After closure of E.P., on 24.08.2011, the petitioner filed E.A.No.420 of 2012 on 28.04.2012 stating that he did not file his counter in the matter on account of ill-health and old age ailments, that he did not meet his counsel to give instructions to his counsel for filing counter. He claimed that on 30.08.2011 itself under S.R.No.9879, he had filed

an application to set aside the ex-parte order dt.24.08.2011, but the said petition copy was merged with other record and could not be traced and hence there is a delay of 243 days in filing a counter in the E.P.

7. By order dt.07.05.2013, the Court below dismissed the said application. It held that the petitioner retired from services on 20.05.2011, that no medical evidence in support of his plea that he was suffering from ill-health and old age ailments has been filed and the delay of 243 days therefore cannot be condoned.

8. Challenging the same, this Revision is filed.

9. Counsel for the petitioner contended that in the counter filed by the Garnishee in the Court below, he had mentioned specifically that last drawn salary of Rs.31,364/- and leave encashment of Rs.26,000/- had been attached and in all a sum of Rs.57,364/- had been withheld, and this is contrary to Section 60 CPC. He therefore, contended that the order dt.07.05.2013 in EA.No.420 of 2012 be set aside and the said EA be allowed permitting the petitioner to contest the EP.

10. Counsel for the 1st respondent on the other hand refuted the above contentions and supported the order passed by the Court below.

11. There is no dispute that the petitioner is an employee in Bank of Baroda and since he was due to retire shortly and he did not possess any movable or immovable properties except the amounts mentioned in the E.P. schedule, the said amounts in the hands of his employer were attached.

12. Admittedly, conditional attachment was ordered on 06.05.2011. In spite of the fact that notice of attachment was served on the petitioner, no counter was filed. On 24.08.2011 by recording that the retirement benefits were already attached, the EP was closed. Unless the order dt.24.08.2011 is set aside, the question of permitting the petitioner to contest the EP does not arise.

13. After the EP was closed, although the petitioner claims to have filed an application SR.No.9879 on 30.08.2011 itself to set aside the ex parte order dt.24.08.2011, no material in support of the said statement is placed before the Court below.

14. The petitioner has also not placed any record in this Court also to show that between 24.08.2011 and 28.04.2012, when he filed EA.No.420 of 2012, he had suffered from ill-health or old age ailments. In the absence of any proof of petitioner filing an application to set aside the ex parte order dt.24.08.2011 or of ill-health, the question of condoning the delay of 243 days in filing his counter in the EP does not arise.

15. Therefore, I do not find any error of jurisdiction in the order dt.07.05.2013 in EA.No.420 of 2012 in EP No.89 of 2011 in O.S.No.501 of 2003 of the I Additional Junior Civil Judge, Tanuku.

16. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs.

17. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

21st September, 2015

gra