

HON'BLE SRI JUSTICE R.SUBHASH REDDY

CIVIL REVISION PETITION No.3474 of 2014

ORDER :

This Civil Revision Petition, under Section 115 of C.P.C., is filed by the petitioner/judgment debtor No.4 aggrieved by the order and decree dated 10.09.2014 in E.P.No.148 of 2012 in O.S.No.1177 of 2010 passed by the I Additional Senior Civil Judge, Vijayawada, Krishna District, allowing the execution petition filed by the 1st respondent/decree holder under Order 21, Rule 46 of C.P.C., seeking to issue salary attachment warrant to the garnishee of petitioner/judgment debtor No.4, subject to Section 60 of C.P.C.

2. It is the specific case of the petitioner/judgment debtor No.4 that there is a collusion between 1st respondent-decree holder and the 2nd respondent-judgment debtor No.1, who is the principal borrower, and, therefore, leaving judgment debtor No.1, this petition is filed for proceeding against him only and inspite of specific plea raised in the counter affidavit filed by him in E.P.No.148 of 2012, without any finding thereon, the impugned order is passed attaching his retrial benefits for recovery of the decretal amount.

3. Heard learned counsel for the petitioner/judgment debtor No.4 and perused the impugned order.

4. Earlier, notice was served on the Recovery Officer of the 1st respondent/decreed holder i.e., Kapil Chit Funds Private Limited, and subsequently the Manager is also served. Pursuant to the orders of this Court dated 21.11.2014, the petitioner has filed a Memo in USR.Nos.1410/14 and 8/15, enclosing acknowledgement card, which shows the Managing Director of the 1st respondent/decreed holder Company is also served. In spite of the same, there is no appearance on behalf of the 1st respondent-decreed holder to oppose this revision.

5. On a perusal of the counter affidavit filed in E.P.No.148 of 2012 in O.S.No.1177 of 2010 by the petitioner/judgment debtor No.4, it is to be seen that though it is always open for the decreed holder to proceed against any of the judgment debtors, at the same time, when a specific plea was raised by the petitioner/judgment debtor No.4 that there is a collusion between the decreed holder and judgment debtor No.1, who is the principal borrower, without there being any finding recorded on the said aspect, the Court below ought not to have passed the impugned order for

attachment of the retrial benefits of the petitioner/judgment debtor No.4. Therefore, in the absence of any specific finding recorded for proceeding against the petitioner/judgment debtor No.4 and also in the absence of any appearance on behalf of the 1st respondent/decreed holder before this Court, it is a fit case to remand the matter for fresh consideration by the Court below.

6. For the aforesaid reasons, the impugned order dated 10.9.2014 is set aside and the learned I Additional Senior Civil Judge, Vijayawada, is directed to consider the matter afresh and pass appropriate orders after hearing the both sides. The order of attachment shall continue till disposal of E.P.No.148 of 2012 by passing appropriate orders.

7. This civil revision petition is allowed as indicated above. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH

REDDY
13.02.2015.
Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

-

CIVIL REVISION PETITION No.3474 of 2014

13.02.2015

Msr