

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.1181 OF 2016

ORDER:

The Judgment Debtor in E.P. No.18 of 2014 in O.S. No.190 of 2012 filed the Civil Revision Petition. It is pursuant to the decree passed, on 18.02.2016 in the E.P. No.18 of 2014 by the learned IV Additional District Judge, East Godavari District at Kakinada, for arrest of the J.Dr for recovery of the decretal amount along with costs of Rs.70,63,148/-. It is impugning the same, present revision is filed.

2) The contentions in the grounds of revision vis-à-vis oral submissions made by the learned counsel for revision petitioner in nutshell are that the lower Court went wrong in ordering arrest of J.Dr, despite he filed I.P No.11 of 2013 (vide Ex.B1) on the file of IV Additional District Judge, East Godavari District at Kakinada, since pending before self same court, that executing Court should have seen that Exs.A1 to A4—registered possessory agreements cum General Power of Attorney executed in favour of J.Dr and in the said properties, he has no saleable interest. The Executing Court should have further seen that the J.Dr mortgaged his properties in favour of bank in availing the secured debt and the bank as secured creditor proceeded under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act'). Exs.B2 and B3—paper notifications published on 15.05.2014 and 06.03.2014 by the bank authorities of Andhra Bank, Bheemavaram regarding taking of possession and to proceed under the provisions of the Act to bring the property to sale. The lower

Court also should have seen that there is no willful disobedience to discharge the debt despite means to pass the order of arrest and the lower Court also went wrong in misreading the expression in **Vaddireddy Venkata Subba Reddy vs Narapureddy Kalyanamma**¹ that is placed reliance on the scope of Section 52 of Provincial Insolvency Act, 1920. The Executing Court should have seen that the petitioner—J.Dr is aged about 72 years and is suffering with various ailments and could not have been ordered arrest of him to recover the decree debt and thereby, the order issuing arrest warrant impugned in the revision dated 18.02.2016 is liable to be set-aside.

3) In the course of oral submissions, it is submissions of the learned counsel for the revision petitioner/ J.Dr that the paper publications issued by the Bank shows taking of possession under Section 13 (4) of the Act read with Rule 8 (1) of the Rules made thereunder with 30 days time to bring the property to sale, for recovery of debt due to the bank of nearly Rs.7,00,00,000/- as mentioned by him in chief examination. Undisputedly, at the time of filing of the suit by the D.Hr in O.S. No.190 of 2012, when there was an attachment before the judgment of Ac.34.00 cents property of the J.Dr which is subject matter of four items of Insolvency Application, thereby should have been considered. He has no means to discharge the decree debt and at best he could not have proceeded for attachment of property for recovery of the debt and without which recourse to arrest is per se unsustainable as per the expressions of this Court and thereby sought for allowing the revision.

¹ 2008 (6) ALD 585

4) Whereas it is the submission of the learned counsel for D.Hr in support of the order of the lower Court that the D.Hr is entitled to proceed against J.Dr out of four modes by any of the modes of execution envisaged under Order XXI Rule 11 C.P.C by filing execution petition and it is not for J.Dr to say how the D.Hr to execute the decree against him even from the expression in Vaddireddy Venakta Subba Reddy (surpa), apart from the expressions of this Court in ***E.N.Satyanarayana vs Chowdamma***² and ***Pothuneedi Laxmana Rao vs Kadasu Muneswara Rao***³ speak that if the property attached before the judgment would be sufficient to discharge the decree debt, the D.Hr has to proceed against the property and said propositions have no application to the facts on hand and even from the expressions, there is no rule of law laid down of at no case, even property of J.Dr is available for attachment, recourse to arrest cannot be availed by D.Hr. The other submission by the learned counsel for the revision respondent—D.Hr is that the J.Dr admitted in his evidence that he is a retired government servant as officer and earning Rs.40,000/- per month as pension which means also pressed by him in his counter vis-à-vis revision application and having sufficient means, he is liable to be arrested and the order of the lower Court holds good, for nothing to interfere by sitting in revision.

5) Heard. Perused the material on record including the decisions placed reliance.

² 2009 (4) ALD 666

³ 2005 (4) ALT 444

6) Once the J.Dr is getting more than Rs.40,000/- per month as pension and once the amount credited to his account, it seizes the exemption provided under Section 60 C.P.C that is also to be considered as his means which he suppressed but for disclosed only in the cross examination when confronted about this factum being a retired engineer. In this regard, learned counsel for the J.Dr—revision petitioner placed reliance on ***Radhey Shyam Gupta vs Punjab National Bank and another***⁴ which speaks property is not liable for attachment or sale in execution of a decree vis-à-vis retrieval benefits, pension etc., did not lose their character from the amount credited to the account of J.Dr. In this regard, there was already earlier expression of the Apex Court in ***Union of India vs Jyothi Chit Fund and Finance***⁵ referred to the consistent view that the moment the amount of retrieval benefits credited the account of the J.Dr it seizes the character of the exemption under Section 60 of C.P.C and liable for attachment or recovery, as the case may be and referring to the two expressions and also the other two expressions of the Apex Court in ***Union of India vs Radha Kissan Agarwala***⁶ ***Calcutta Dock Labour Board vs Sandhya Mitra***⁷, this Court vide order dated 21.09.2015 reported in C.R.P. No.3532 of 2015, held that the moment the amount is credited to the account of J.Dr or the pensioner's retrieval benefits even earlier before crediting to the account are not liable for attachment, seizes the character and liable for attachment and also not liable for exemption.

⁴ (2009) 1 SCC 376

⁵ AIR 1976 SC 1163

⁶ 1969 (1) SCC 225

⁷ 1985 (2) SCC 1 = 1985 SCC (L&S) 383

7) The other decisions placed reliance by the learned counsel for the J.Dr of ***L.Rajendra Naidu vs A.K.Das***⁸ and ***Balavenkatagari Rama Muni Reddy vs K.Fakruddin***⁹ have also no application to the facts of the case on hand.

8) Apart from it, even what is the property mortgaged to the bank no way takes away the ownership much less possession, for after possession notice given by the Bank even there is nothing to show physical possession taken, but for constructive possession under Section 13 (4) of the Act for no proceedings under Section 14 of the Act through the Executive Magistrate or Chief Magistrate as the case may be to take physical possession, the income from the property, the J.Dr is enjoying. Even from the proceedings to bring his property to sale by Bank pursuant to the publication, there is nothing to show the bank conducted any public auction. Even if it is so, it must be shown by him of, which of the four items of the I.P schedule sold by the bank out of the total extent of him undisputedly of Ac.34.00 cts, leave about the same is not tallying to the publication issued by the bank under the Act but for the submission by the learned counsel for the revision petitioner that 4th item of I.P schedule was converted into plots and thereby after giving provision for roads and other amenities, there is a lesser extent. In fact, in the I.P schedule he has shown the four items and the bank publication to sale is only for three Items and the fourth item of the I.P schedule representing Ac.34.00 cts, which is undisputedly in the possession of J.Dr, for not a case of by filing the debtor I.P, he handed over the possession to the Official Receiver for interim custody and management, much less any

⁸ 2013 (1) ALD 59

⁹ 2015 LS (Hyderabad) 740

taking of possession of the same by the official receiver. Once, from the above he is in possession and getting income therefrom, for nothing to show none of the extents yield any income, apart from that, he converted the 4th item of I.P schedule into profitable plots and some claimed alienated, if any, suffice to say there are sufficient means to the J.Dr and having means he is avoiding without any payment to liquidate the decree debt and thereby for this Court while sitting in revision against the impugned order, there is nothing that requires interference.

9) Accordingly, the C.R.P. is dismissed. No order as to costs.

10) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dt.18.08.2016
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Date:18.08.2016

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