

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.3360 OF 2016

ORDER:

1. This Civil Revision Petition is arising out of the order, dated 25.04.2016, passed in Execution Petition No.16 of 2013 in Original Suit No.74 of 2011 on the file of the Principal Junior Civil Judge, Vizianagaram (for short, 'the trial Court').

2. The respondent has filed a petition before the trial Court under Order XXI Rule 48 of C.P.C. to direct the garnishee-Mandal Educational Officer, Denkada Mandal, Vizianagaram District to withhold a sum of Rs.95,326/- from the salary of the petitioner and remit the same to the trial Court.

3. Originally, the respondent has filed a suit in O.S. No.74 of 2011 before the trial Court, against the petitioner herein, for recovery of the amount basing on a promissory note. The said suit was decreed, on contest. As the petitioner herein has not been paying the decreetal amount, the respondent has preferred E.P. No.16 of 2013 for realization of the decreetal amount. In the said E.P., attachment of salary of the petitioner herein was ordered.

4. Learned counsel for the petitioner submitted that the salary of the petitioner has been attached in two E.Ps. viz, E.P. No.34 of 2013 and E.P. No.7 of 2014 earlier and the salary of the petitioner is being deducted in both the E.Ps and apart from those E.Ps, in the present E.P. No.16 of 2013, her salary was attached. It is further submitted that the petitioner's husband is an unemployee, and she has to pay the college fees of her two daughters, and her take home salary is only around Rs.10,000/- p.m., whereas the attachment amounts in all these E.Ps comes about to

Rs.12,000/- p.m. and the said attachment was not made in accordance with the provisions under Section 60 of C.P.C., as such the attachment in E.P. No.16 of 2013 is liable to be set-aside. However, during the course of argument, learned counsel for the petitioner requested this Court to direct the garnishee to deduct the attached amount in E.P. No.16 of 2013 only after four months, and in the meanwhile she will clear the amounts attached in E.P. No.34 of 2013 and in E.P. No.7 of 2014.

5. Learned counsel for the respondent contended that the attachments earlier made in E.P. No.34 of 2013 and E.P. No.7 of 2014 have been cleared as the entire amounts in those E.Ps have been realized; as such, no earlier E.P. is pending for recovery of salary from the petitioner except the present E.P. No.16 of 2013. It is further contended that the petitioner requires four months time for clearing the attached amounts in both the E.Ps cannot be a ground to raise the attachment in the instant E.P. and, hence, sought for dismissal of the Civil Revision Petition.

6. Considering the arguments of both the counsel, as they are submitting their versions without any proof or basis, I feel it appropriate to pass the following conditional order.

7. The trial Court is directed to ascertain whether the attachments made earlier in E.P. No.34 of 2013 and in E.P. No.7 of 2014 have been realized or not. In case, the attached amounts in both the E.Ps are realized to the full satisfaction, then the trial Court may proceed against the attachment in E.P. No.16 of 2013. In case, if the trial Court finds that the earlier two E.Ps are still pending for realization and recoveries are to be made from the salary of the petitioner, in that case, attachment of the amount in E.P. No.16 of 2013, from the salary of the petitioner, shall be

made only after four months, in accordance with the provisions under Section 60 of C.P.C.

8. Accordingly, subject to the above conditions, the Civil Revision Petition is allowed. No order as to costs.

9. In consequence, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand dismissed as infructuous.

G. SHYAM PRASAD, J

Date: 19-08-2016.
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