

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3668 of 2010

ORDER:

The decree-holder filed this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity), having been aggrieved of the order dated 15.03.2010 of the learned Principal Junior Civil Judge, Tuni of East Godavari District, passed in E.P.No.45 of 2008 in O.S.No.218 of 2001 filed for attachment of salaries of respondents 1 and 3/judgment debtors 1 and 3 for realisation of the decree debt in a sum of rupees 1,16,066-22 paise with subsequent interest and execution costs.

2. I have heard the submissions of the learned counsel for the revision petitioner/decreed-holder and the learned counsel for judgment debtors/respondents 1 and 3. I have perused the material record.

3. A perusal of the material record would show that after the attachment warrants are served on the paying and disbursing officer of the judgment debtors 1 and 3, the said officer filed a counter before the Court of execution stating that after necessary deductions are made from the salaries of said judgment debtors, no amount is available for being attached and sent to the Court towards satisfaction of the decree debt. The Court below, having taken into consideration the said submission in the counter of the garnishee, dismissed the EP. Therefore, the aggrieved decree-holder is before this Court.

4. The learned counsel for the decree-holder would submit that judgment debtors 1 and 3 are still in service and that even as per the submissions in the counter of the garnishee, judgment debtors 1 and 3 are drawing substantial amounts which are more than the amounts they have pleaded in their counters and that the deductions from the respective salaries of judgment debtors 1 and 3 shown by the garnishee are not correct, and that the garnishee excluded from the salaries of the judgment debtors 1 and 3 the amounts which are not exempt from attachment under the provision of Section 60 of the Code and that if the deductions are made as per law, there would be sufficient amounts for attachment and sending to the Court towards satisfaction of the decree debt of the decree-holder and that the Court of execution did not examine the said aspect and hence, the Court below may be directed to call for the records/original salary particulars of judgment debtors 1 and 3 from their employer and examine the matter with reference to the law applicable and decide the issues involved afresh in accordance with the procedure established by law.

5. The learned counsel for the judgment debtors 1 and 3 submitted that the judgment debtors 1 and 3 are getting meagre salaries of less than rupees 1,244-95 paise per month each and that the judgment debtors 1 and 3 are not having sufficient salaries for effecting attachment for realisation of the decree debt. Having so contended, he supported the orders of the Court below.

6. A perusal of the order impugned and the counter of the garnishee would show that certain deductions, which are not *prima facie* exempt from attachment, were also made from the

salaries of judgment debtors 1 and 3 and that the Court below, without calling for the salary particulars of judgment debtors 1 and 3 from their employer, placed reliance on the counter of the garnishee and passed orders without examining as to whether the deductions made were in accordance with the provision under Section 60 of the Code. In that view of the matter, this Court is of the considered view that the matter requires examination afresh by the Court below.

7. Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside and the Execution Petition is remanded to the Court below for disposal afresh in strict accordance with the procedure established by law, however, after calling for the salary particulars of judgment debtors 1 and 3 from their employer. Considering the advanced ages of the judgment debtors 1 and 3, the Court below is directed to complete this exercise as expeditiously as possible and preferably within two (02) months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

14th October, 2016
Bvv

M.Seetharama Murthi, J