

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4217 of 2016

ORDER:-

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed challenging the order dated 06.11.2015 passed in E.P.No.204 of 2015 in ABR/CF No.167 of 2014 on the file of the V Junior Civil Judge, City Civil Court, Hyderabad, whereby, the Executing Court directed the employer of judgment debtor No.4 – G.Vijay Kumar to withhold an amount of Rs.1,46,110/- from his salary in monthly installments.

2. The only grievance of the revision petitioner is that the attachment of salary of the judgment debtor No.2 – V.Raghu was already ordered for recovery of the entire decree debt and that no notice was served to the revision petitioner prior to issuing notice under challenge as per Order XXI rule 48-A of CPC and, therefore, the execution proceedings are illegal and are liable to be set aside.

3. Undisputedly, Arbitration Award was passed for recovery of the amount due to 1st respondent herein – Margadarsi Chit Funds Private Limited, against the revision petitioner/judgment debtor No.4 and three others, who are the principal borrower and co-borrowers, as their liability is co-extensive with that of the principal borrower under Section 128 of the Indian Contract Act, 1872, and therefore, the Executing Court is not empowered to attach the salary of any individual or proceed against all of the Judgment Debtors for realization of the decree debt and it is the choice of the decree-holder to proceed against any one of the judgment debtors or against all for recovery of the amount due under Arbitration Award.

4. The only contention urged by the learned counsel for the revision petitioner before this Court is that no notice was served on the revision petitioner prior to issuing notice under challenge as per Order XXI rule 48-A of CPC. This contention cannot hold good since no prior notice is required to be served, except notice under Order XXI Rule 22 of C.P.C., where, the application for execution is made beyond two years after the date of passing of the decree. In the present case, the date of award was 27.12.2014. Therefore, notice under Order XXI Rule 22 of C.P.C., is also not required to be issued.

5. Undisputedly, the amount due under the Arbitration Award is not yet discharged. Therefore, the decree-holder can proceed and recover the amount in any of the modes of execution for realization of the decree debt by proceeding against one or all of the judgment debtors. Hence, I find no illegality in the order passed by the Executing Court warranting interference by this Court by exercising revisional powers under Section 115 of C.P.C. The Civil Revision Petition is *de void* of merit and is liable to be dismissed.

6. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Revision shall stand closed in consequence.

M. SATYANARAYANA MURTHY, J

22nd September, 2016
Bvv