

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2486 of 2015

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the 4th Judgment Debtor is directed against the order dated 16.04.2015 of the learned Principal Junior Civil Judge, Gudur passed in E.P.No.27 of 2011 in O.S.No.89 of 1999, whereby, the learned Junior Civil Judge, while overruling the objections in the counter of the 4th Judgment Debtor, had directed for the issuance of warrant of attachment of the salary of the 4th Judgment Debtor for another 17 months, subject to Section 60 of the Code.

2. I have heard the submissions of the learned senior counsel appearing for the petitioner/4th Judgment Debtor and also the learned counsel for the 1st respondent/decreed-holder. The other respondents are stated to be not necessary parties. I have perused the material record.

3. The facts as borne out by the material record and as per the submissions now made, in brief, are as follows:-

The decreed-holder, having obtained a decree for recover of money, had filed the instant Execution Petition against the petitioner herein/4th Judgment Debtor for recovery of rupees 56,472/- by way of attachment of the salary of the 4th Judgment Debtor as per the provision of Order XXI Rule 48 read with Section 60 of the Code. The case of the decreed-holder is that the amount mentioned in the Execution Petition is not paid and is recoverable and that therefore, the decreed-holder is entitled to seek attachment of the salary of the 4th Judgment Debtor. The 4th Judgment Debtor had filed a counter *inter alia* contending that earlier, the decreed-holder had filed E.P.No.83 of 2006 and had sought attachment of the salary of the 4th Judgment Debtor and that pursuant to an attachment order passed in the said Execution Petition, 20 months salary, i.e., attachable portion of the salary,

from July 2006 to February 2008 was withheld by the Salary Disbursement Officer of the 4th Judgment Debtor and thus, in all, rupees 19,500/- was withheld for being remitted to the Court of execution towards the amount due under the decree and that subsequently, on 19.11.2008 that earlier Execution Petition was closed and that thereafter, the instant Execution Petition was filed and that pursuant to the orders of attachment of salary of the 4th Judgment Debtor in the present Execution Petition, 4 months salary, i.e., attachable portion of the salary, from August 2012 to December 2012 in a total sum of rupees 4,000/- was withheld by the Salary Disbursement Officer and thus, in all, the salary of the 4th Judgment Debtor was under attachment for 24 months in the execution of one and the same decree and that therefore, the salary of the 4th Judgment Debtor is finally exempt from attachment in execution of the instant decree. As was already noted, the Court below overruled the objections of the 4th Judgment Debtor and passed the impugned orders.

4. At the hearing, the learned senior counsel appearing for the 4th Judgment Debtor, while reiterating the stand of the 4th Judgment Debtor, would bring to the notice of this Court that the Court of execution had overruled the objection for the reason that out of the attached and withheld amount, only rupees 7,000/- was remitted by the Salary Disbursement Officer into the Court, as is evident from the ledger of the Court and that therefore, the Court of execution did not take into consideration the evidence brought on record by the 4th Judgment Debtor by filing exhibits B1 and B2, wherein, the salary attached and withheld in two spells was certified by the Salary Disbursement Officer of the 4th Judgment Debtor and that the Court of execution, having erroneously found that there is only an amount of rupees 7,000/- in the Court's deposit, had illegally directed the continuation of attachment for 17 more months, contrary to the proviso to Section 60 (1) (i) of the Code.

5. On the other hand, the learned counsel for the decree-holder would

submit that during the course of enquiry before the Court of execution, though sufficient opportunity was given to the 4th Judgment Debtor, she did not produce the acquittance register to show as to what was the salary actually withheld during the disputed period and that she had only filed exhibits B1 and B2 without any further proof that the amount mentioned therein is remitted to the Court and that the Court record disclosed that only rupees 7,000/- is received from the Salary Disbursement Officer of the 4th Judgment Debtor and that as per the Court record, Rupees 7,000/- was earlier received and that subsequently, pursuant to the orders of attachment of salary in this instant Execution Petition, Rupees 4,000/- was also received, as is evident from exhibit B2 and that therefore, in all, Rupees 11,000/- was received and the said amount is remitted to the Court below. He would also submit that unless the entire amount which was withheld by the Salary Disbursement Officer of the 4th Judgment Debtor is received by the Court, it is not safe to hold that the salary of the 4th Judgment Debtor was attached continuously or intermittently for 24 months and that therefore, the 4th Judgment Debtor is not entitled to invoke the benefit of the said proviso to Section 60 of the Code.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. The fact that the attachment of salary of the 4th Judgment Debtor was earlier ordered in E.P.No.83 of 2006 and her salary was under attachment for 20 months from July 2006 to February 2008 is not in dispute. That Execution Petition was closed on 19.11.2008 is also not in dispute. As fairly submitted by the learned senior counsel appearing for the 4th Judgment Debtor, in the instant Execution Petition, the salary of the 4th Judgment Debtor was under attachment for four months, i.e., from August 2012 to December 2012 and Rupees 4,000/- was received from the Salary Disbursement Officer of the 4th Judgment Debtor and is lying to the credit of the Execution Petition is also not in dispute.

8. Now the only question is that under the earlier attachment orders, whether rupees 19,500/- from July 2006 to February 2008 was withheld by the Salary Disbursement Officer of the 4th Judgment Debtor.

8.1. As per the Court records, only Rupees 7,000/- out of the said attached amount was remitted to the Court and is lying in the Court deposit is not in dispute. Exhibit B1, on a plain perusal, would disclose that the Salary Disbursement Officer of the 4th Judgment Debtor withheld from the salary of the 4th Judgment Debtor Rupees 19,500/- during the said period. In the well-considered view of this Court, the 4th Judgment Debtor cannot be called upon to produce better evidence than that of exhibit B1, as it is the duty of the Salary Disbursement Officer of the 4th Judgment Debtor to remit the withheld salary to the Court and it is not the concern of the 4th Judgment Debtor. The 4th Judgment Debtor, in deed, has placed on record the best possible evidence which *prima facie* would show that her salary was attached and an attachable portion was withheld in the earlier execution proceedings for a period of 20 months. In the well considered view of this Court, in view of the evidence, which is available on record, the Court of execution ought to have accepted the said evidence as sufficient without casting further onus upon the 4th Judgment debtor or ought to have made verification by directing its office to address a letter to the garnishee, that is the salary disbursing officer of the 4th judgment debtor, and ought to have ascertained the true facts before ordering further attachment of the salary of the 4th Judgment Debtor for 17 months, as the above said proviso to Section 60 of the Code ordains that 'where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion of the salary shall be finally exempt from attachment in execution of that decree' and as such judgment debtor's salary cannot be ordered to be further attached. Therefore, the Court below is duty-bound to verify and satisfy itself in the first instance as to whether the further order of attachment could be made under law against the

salary of the 4th Judgment Debtor. Nonetheless, without verification, which could have been made, the order impugned was passed despite the fact that the 4th Judgment Debtor had produced and exhibited the best possible evidence to show that his salary was already under attachment for 24 months in two spells. Viewed thus, this Court finds that the order impugned brooks interference.

9. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. The Court of execution is directed to first follow the procedure and direct its office to address a letter to the Garnishee/Salary Disbursement Officer of the 4th Judgment Debtor and secure information as to for how long the salary of the 4th Judgment Debtor was under attachment and how much amount from the salary of the 4th Judgment Debtor is withheld and remitted into the Court and what is the balance amount to be remitted into the Court, and then only further proceed in the matter in accordance with the procedure established by law, if necessary.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M. Seetharama Murthi, J

01st March, 2016
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