

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No. 572 OF 2016

ORDER : *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Revision is preferred by the 2nd judgment debtor calling in question the order passed in E.P.No. 78 of 2014 which is taken out for executing the Award passed in Arbitration Case No. 143 of 2013 by the Arbitral Tribunal, Penukonda. The judgment debtor No. 2 is working as a Senior Accountant at the Sub-Treasury Office, Guntakal, Anantapur District. Hence, the decree-holder sought for attachment of his salary for satisfying the decree, which is drawn for a sum of Rs.18,36,913/-.

Learned counsel for the petitioner would urge before us that the Arbitrator has passed an Award *ex parte* and the petitioner did not have an opportunity to contest the said case. Further, it is also urged that the principal borrower is not proceeded against in the Execution Petition.

In our opinion, both the contentions urged above do not merit consideration at our hands for, no steps have been taken by the petitioner judgment debtor No.2, in spite of coming to know of the Award passed in Arbitration Case No. 143 of 2013 by the Arbitral Tribunal, to have the said Award set aside. On the other hand, the judgment debtor No.2, the petitioner herein, participated in the inquiry before the executing Court and raised that plea. The executing Court, it is a settled principle of law, cannot go behind the decree and examine whether such a decree has been passed validly or not. Only question that can be examined, at best, is whether the authority, which passed the decree, has the necessary jurisdiction to pass such decree or not. It was never doubted before the executing Court that the

agreement, which is executed in favour of the decree-holder by the petitioner herein in the company of the principal borrower, never contained any clause for securing the disputes amongst the parties resolved through the mechanism of arbitration. Therefore, it is futile for one to contend before the executing Court that there was no opportunity accorded by the Arbitral Tribunal to the petitioner herein to put-forth his defence. Once the petitioner herein has been set *ex parte* by the Arbitral Tribunal, it pre-supposes that he has received the notice from the Tribunal, but ignored the same and failed to participate in the arbitration proceedings.

Sofar as the second contention is concerned, it is an equally settled proposition of law that the decree-holder is entitled to proceed against any or all of the judgment debtors for the purpose of execution of any decree. When once a decree is passed rendering the respondents / defendants as joint and severally liable for the decretal amount, choice rests with the decree-holder to realize the decretal amount by taking suitable and appropriate measures. Since the petitioner herein is a government servant, his salary, which gets disbursed at regular periodicity on month to month basis, is sought to be attached. It is always open to the petitioner to recover the said money from the principal borrower. A guarantor stands at par with that of the principal borrower when a decree with joint and several liability is drawn.

We therefore, do not find any justifiable reason to entertain this Revision and it is accordingly, dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

16th March 2016

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