

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.843 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the decree holder in E.P.No.132 of 2012 in O.S. No.641 of 1989 on the file of the Court of the learned Principal Senior Civil Judge, Rajahmundry, East Godavari District. The grievance of the DHr is with regard to non-passing of orders in the said execution petition by the said executing Court.

2. I have heard the submissions of *Sri Krishna Mohan Sakharam*, learned counsel for the revision petitioner/ Decree Holder (hereinafter, 'DHr') and *Sri K.E.Narasimha Rao*, learned counsel representing the learned Additional Advocate General appearing for the respondent/ Judgment debtor (hereinafter, 'JDr').

3. The grounds urged and the submissions made in line with the grounds, in brief, are as follows:

The executing Court ought to have issued cheques in favour of the DHr as 'no objection' for issuance of cheques was endorsed by the learned counsel representing the respondent/ JDr, the Superintending Engineer, Construction Circle, Dhawaleswaram. The learned Principal Senior Civil Judge ought to have raised attachments obtained by 3rd parties of the amount lying to the credit of the DHr's EP. The amount was deposited by the JDr to the credit of the subject EP of the DHr. The said amount was deposited as per the orders dated 03.12.2014 of this Court in CRP SR 12410 of 2014. When all the facts were brought to the notice of the learned Principal Senior Civil Judge, the learned Judge ought to have raised the attachments against the amount lying to the credit of the subject EP. The learned Principal Senior Civil Judge failed to understand that when once money is deposited by the Government to the

credit of the EP of the DHr, it is no longer the money of the Government and that the money lying to the credit of the EP of the DHr is intended to be paid to the DHr towards full satisfaction of his decree and that the said amount cannot be attached by any other DHr in any other EP alleging that it is still the Government money. The learned Principal Senior Civil Judge ought to have seen that the attachment orders granted in the other EPs are unsustainable as the money lying to the credit of this DHr's EP is deposited by the Government towards full satisfaction of the decree of this DHr and it is no longer the Government's money and is not liable for attachment in any other EP filed by any other DHr. Therefore, necessary directions may be given to the learned Principal Senior Civil Judge to pass appropriate orders in the subject execution petition of the DHr.

4. The learned counsel representing the learned Additional Advocate General would submit as follows: 'The Government/JDr is always contending that the attachment orders directing attachment of the amounts lying to the credit of this EP, which are passed in some other EPs filed by some other DHrs are unlawful and unsustainable. In fact, the Government have already filed applications in the other EPs for raising the attachment orders whereby the amount lying to the credit of the present EP of this DHr was attached. As per the instructions received by the office of the learned Advocate General, the said applications were returned and are in the process of being re-presented. On 01.10.2015, in E.P.No.132 of 2012 in O.S.No.641 of 1989, i.e., in the present EP, an amount of Rs.2,97,58,500/- was deposited by the J.Dr/ Superintending Engineer, Construction Circle, Dhawaleswaram. On 01.10.2015, in E.P.No.43 of 2014 in O.S.No.640 of 1989, an amount of Rs.2,12,41,500/- was deposited by the very same JDr. The said amounts are deposited in the two EPs including the subject EP, towards full satisfaction of the amounts due and payable to the DHr/ petitioner herein in the said two EPs. In fact, some other DHrs, who obtained decrees against the Government, got

attached portions of the amounts lying to the credit of the aforesaid two EPs of the present DHr thinking that the money belongs to the Government though the money is deposited for being paid to the DHr/ petitioner herein towards full satisfaction of the decrees in the said EPs. Therefore, the Government is taking steps in the other execution petitions filed by the third party/ DHrs for raising attachment orders obtained by the said 3rd party DHrs as the said attachment orders are unsustainable under facts and in law. Further, the DHr herein filed applications for issuance of cheques in both his EPs including the subject E.P. No.43 of 2014 in O.S.No.640 of 1989. By orders dated 25.04.2016 passed in E.A.No.373 of 2016, the executing Court granted a cheque for Rs.2,01,35,790/- only in favour of the DHr, petitioner, M.Shankar Reddy, towards part satisfaction and part satisfaction was recorded. Similarly, in the other EP of this petitioner/ DHr, viz., E.P.No.132 of 2012 in O.S.No.641 of 1989, the executing Court, by orders dated 25.04.2016, in E.A.No.374 of 2016 granted a cheque for Rs.2,87,58,500/- in favour of the DHr, petitioner, M. Sankar Reddy, towards part satisfaction and part satisfaction was recorded. The JDr has no objection for the executing Court passing appropriate orders in the two EPs of the DHr and in the EPs of third parties, wherein erroneously attachment orders were granted.

5. I have bestowed my attention to the facts and submissions.

6. The facts are not in dispute. To the credit of the two EPs including the subject EP of the DHr-petitioner, the JDr deposited Rs.2,97,58,500/- and Rs.2,12,41,500/-. Subsequently, the cheque petitions in E.A.Nos.373 and 374 of 2016 were allowed by the executing Court and the DHr, petitioner herein, was granted cheques for Rs.2,87,58,500/- and Rs.2,01,35,790/- towards part satisfaction of the Decrees in the two decrees in the said EPs. The executing Court could not issue cheques for the balance amounts in view of the attachment orders obtained by some other third party DHrs in some other EPs.

Unless those attachment orders are raised either on the request of the DHr herein or the JDr herein, no further progress is possible in the subject EP and the other EP of this DHr/petitioner. The submissions made on behalf of the respondent/JDr would reflect that steps were already taken by the Government in the other EPs filed by third party DHrs for raising the attachment orders passed for attachment of the money lying to the credit of the present EP of the present DHr on the ground that the said attachment order granted in the other EPs of some other DHrs are unsustainable. The DHr/petitioner herein is also at liberty to move the executing Court for raising the attachment orders passed in the said other EPs by following the procedure established by law.

7. Though it is not stated in the grounds of revision, it is further contended that in view of the delay in deposit of the amount by the JDr as per the terms of settlement arrived at between the parties, the DHr/petitioner is entitled to interest at 18% per annum. However, the entitlement of the DHr to any amount of interest has to be first decided by the executing Court. In the present revision, which is filed complaining non-passing of the orders in the EP of the DHr, no orders granting substantive relief can be passed.

8. Viewed thus, this Court is of the view that the revision petition can be disposed of with appropriate directions.

9. Accordingly, the Civil Revision Petition is disposed of giving liberty to the DHr/petitioner to take appropriate steps to file appropriate applications, as per the procedure established by law, in the EPs filed by third party DHrs for raising attachment orders whereby amounts lying to the credit of the present execution petition of the DHr were attached. The JDr/respondent herein is also directed to make requests to the executing Court to dispose of the applications filed by the Government/JDr for raising attachment orders passed in the other execution petitions filed by third party DHrs by bringing to the

notice of the executing Court the true facts and the legal position obtaining. It is made clear that the DHr is at liberty to raise at an appropriate stage of the subject EP the issue with regard to his entitlement to interest on account of delay in depositing the amount due to him under the decree as per the terms of settlement. It is needless to state that if any such contention is raised by the DHr the same shall be considered by the executing Court on its merit and in accordance with facts and law, however, after giving an opportunity of hearing to both the sides.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

25th October, 2016
RAR

JUSTICE M. SEETHARAMA MURTI

