HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4248 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C. aggrieved by an order dated 24.11.2015 passed in O.E.P.No.68 of 2014 in O.S.No.544 of 2012 on the file of the I Additional Junior Civil Judge, Chittoor.

2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in E.P.

3) The brief facts of the case are that the decree holder filed a suit for recovery of money which was decreed against J.Dr.Nos.1 to 7 on 12.12.2013 for an amount of Rs.92,664.00 together with interest at 6% on principal sum of Rs.82,050/-. The decree also states that defendants 1 to 7 are jointly and severally liable to pay the said amount. As no money was paid, the decree holder filed O.E.P.No.68 of 2014 for execution of the decree. All the judgment debtors were made as respondents in the said E.P. Initially the decree holder opted for execution of the decree against judgment debtors 1 to 3 and 5 by way of attachment of salary and later on not pressed the E.P. against judgment debtor Nos.1 and 3. The judgment debtor No.2 resisted the execution by filing a counter stating that he is getting meager salary and that he is

not able to meet his family necessities with the said meager salary. He further states that the other judgment debtors are having sufficient means to discharge the decretal amount. Judgment debtor No.5 also filed counter contending that he is only guarantor to judgment debtor No.1 and the judgment debtor No.1 who is working as teacher in M.P.P.School at V.Ramapuram is having landed properties in his name to discharge the decretal amount. He further stated that the decree holder has no right to file execution of decree against judgment debtor No.5 until he exhausts his remedy against judgment debtor No.1.

4) After considering the rival submissions the trial Court allowed the E.P. Aggrieved by the same, judgment debtor Nos.2 and 5 filed the present Civil Revision Petition.

5) Reliance is placed by the learned counsel appearing for the revision petitioners in *M.Venkata Ramanaiah v. Margadarshi Chit Fund Limited, Kadapa and others*[1] wherein the learned Single Judge of this Court held as under:

> " Another facet is that even if the execution proceedings were otherwise tenable and legal, the obligation on the part of the petitioner, as a co-surety, was guided by Sections 146 and 147 of the Act. Admittedly, there is no contract to the contrary

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[1] (2009) 4 ALD 300

> and at the most, the petitioner was liable to share the whole debt equally along with other five sureties. There was absolutely no basis for the 1st respondent to proceed only against the petitioner, for the entire amount."

6) Relying on the aforesaid citation, learned counsel for the petitioners submits that the decree holder cannot proceed against the petitioner for the entire amount and that the E.P. ought to have been dismissed.

7) In State Bank of India Vs. Indexport, Registered and others[2] , the Supreme Court held as under:-

> "The decree is a money decree against all the defendants-respondents and a mortgage decree only against defendant-respondent No. 2 so far as the shop is concerned. The decree does not put any fetter on the right of the decree-holder to execute it against any party, whether as a money decree or as a mortgage decree. It is simultaneous and is jointly and severally against all the defendants-respondents, including the guarantor. It is the right of the decree-holder to proceed with it in a way he likes. There is nothing in law which provides a composite decree to be first executed only against the property. The decree for money is a simple decree against the judgment-debtors, including the guarantor and in no way subject to the execution of the mortgage decree against the judgment debtor No. 2-Respondent No. 2. If, on principle, a guarantor could be sued without even suing the principal debtor there is no reason, even if the

[2] (1992) AIR 1740

> decretal amount is covered by the mortgage decree to force the decree-holder to proceed against the mortgaged property first and then to proceed against the guarantor."

8) In *M.Rama Rao v. Sriram City Union Finance Limited*[3] a Division Bench of this Court held as under:

> "It is not in dispute that the award was passed jointly and severally against the petitioner as well as the principal borrower. The said award passed by the arbitrator has become final because it has not been challenged. Section 128 of the Indian Contract Act, 1872 reads as followed:
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> Surety's liability: The liability of the surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract....
>
> From the above provision, it is clear that the word co-extent is an objective for the word 'extent' and it can relate only to the quantum of the principal debt. Hence, surety or guarantor is equally liable to pay the principal debt.
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> In view of the law laid by this Court coupled with Section 128 of the Indian Contract Act, it is clear that it is for the decree holder to proceed against the principal borrower or surety/guarantor. Hence, we hold that the decree holder can proceed to recover the amount in accordance with law against principal borrower or guarantor or both simultaneously."

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[3] (2014) 6 ALT 69 (DB)

9) From the judgments referred to above, it is clear that the decree holder can proceed against any one of the judgment debtors and he is not required to proceed against the principal borrower at the first instance. Therefore, the order passed by the trial Court is strictly in accordance with law and the same warrants no interference.

10) Accordingly, the Civil Revision Petition is dismissed without any order as to costs. Consequently, the Miscellaneous Petitions pending if any shall stand closed.

JUSTICE C. PRAVEEN KUMAR

20.10.2016
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