

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No.1615 OF 2011

ORDER:

This revision petition is filed against the order, dated 04.03.2011, passed in E.P.No.46 of 2010 in O.S.No.46 of 1998 by the Senior Civil Judge, Bapatla, allowing the Execution Petition filed by respondent Nos.1 and 2 by attaching the salary of the petitioner – 1st judgment debtor for realization of the decretal amount.

2. The case of the petitioner is that respondent Nos.1 and 2 filed the aforesaid Suit for grant of maintenance and the trial Court, by order, dated 25.10.2004, decreed the same granting maintenance to respondent No.2 at the rate of Rs.1,000/- per month apart from other reliefs. Aggrieved by the same, he preferred A.S.No.261 of 2004 before the IX Additional District Judge, Guntur, and while the said appeal was pending, respondent Nos.1 and 2 filed E.P.No.67 of 2005 for recovery of an amount of Rs.1,98,836/- by attaching the salary of the petitioner. On 29.06.2006, the aforesaid E.P. was closed making absolute the attachment already made and on 11.10.2006, the appeal filed by the petitioner was allowed in part by reducing the maintenance amount from Rs.1,000/- per month to Rs.500/- per month from the date of filing of the Suit till

13.07.1999. Thereafter, the present E.P.No.46 of 2010 was filed for realization of the decretal amount and the executing Court, by impugned order, dated 04.03.2011, allowed the same by attaching the salary of the petitioner under Order XXI Rule 48 C.P.C. subject to Section 60 C.P.C. for realization of the decretal amount. Aggrieved by the same, the present revision petition is filed.

3. Counter affidavit is filed by respondent Nos.1 and 2 stating that the judgment and decree, dated 25.10.2004, is modified in the appeal and the executing Court, by taking the same into account, has allowed the present E.P. by attaching the salary of the petitioner.

4. Heard learned counsel for the petitioner and learned counsel for respondent No.1. Though notice is served on respondent No.5, none appears.

5. From a perusal of the material on record, it is clear that the judgment and decree, dated 25.10.2004, was modified by the appellate Court by judgment and decree, dated 11.10.2006, by reducing the maintenance amount from Rs.1,000/- per month to Rs.500/- per month. It is also clear that subsequent to filing of the appeal, E.P.No.67 of 2005 was filed and certain amount was received and after disposal of the appeal, the present E.P. was filed for realization of the remaining decretal amount and the same was allowed by the impugned order by attaching the salary of the petitioner for realization of the decretal

amount. It is the case of the petitioner that the amount in excess of entitlement is realized by respondent Nos.1 and 2 as per the judgment of the trial Court, but as the appellate Court has modified the judgment and decree of the trial Court and reduced the maintenance from Rs.1,000/- per month to Rs.500/- per month, the said amount which is realized in excess has to be adjusted towards future period.

6. In view of the facts and circumstances, the impugned order of the executing Court is clarified that the petitioner is liable to pay maintenance to respondent No.2 as per the judgment and decree, dated 11.10.2006, in A.S.No.261 of 2004 and the executing Court is directed to pass necessary orders for attachment of the salary of the petitioner as per the judgment and decree, dated 11.10.2006, if the amount is not yet realized.

7. Subject to the above, the revision petition is disposed of. Miscellaneous Petitions, if any, pending in this revision petition, shall stand closed. No costs.

REDDY, J
March 02, 2016
MD

A. RAJASHEKER