

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5568 of 2011

ORDER:

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This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the petitioners/judgment debtors 2 and 5 is directed against the order dated 01.11.2011 of the learned Senior Civil Judge, Tadepalligudem passed in E.P.No.112 of 2011 in O.S.No.229 of 2008 filed for realization of the decree debt by attachment of the salaries of the said judgment debtors.

2. I have heard the submissions of the learned counsel for the judgment debtors 2 and 5 (JDrs) and the learned counsel for the decree holder (DHr) at the stage of admission. I have perused the material record.

3. The facts, as stated at the hearing, in brief, are as follows:

The DHr/1st respondent herein having obtained a decree for recovery of money had filed the aforementioned execution petition against the JDrs for attachment of the salaries of the said JDrs *inter alia* stating that inspite of the decree granted in favour of the Decree Holder, the judgment debtors did not pay any amount due under the decree and that the entire amount in a sum of more than Rs.2,90,000/- with interest and costs as stated in the execution petition is due and payable to the Decree Holder by the JDrs and that the JDrs 2 and 5 are the employees of the South Central Railway and that they are residents of Tadepalligudem and that the 5th respondent herein is their salary payment and disbursing officer and garnishee.

3.1. On filing of the aforementioned execution petition by the Decree Holder, the Court of execution ordered attachment of the salaries of the judgment debtors 2 and 5 under Order XXI Rules 48 read with Section 60 of the Code. Further, while directing notices under Rule 48 of Order XXI to be issued to the said JDrs, the Court below had also further directed for issuance of the salary attachment warrants.

3.2 Aggrieved of the said orders dated 01.11.2011 passed by the court of execution, the present civil revision petition is filed *inter alia* contending that the Order of the Court below is irregular and improper and that the Court below ought to have seen that salary attachments cannot be ordered without first issuing notices to the JDrs and that the Court below had erred in directly ordering attachment of the salaries of the judgment debtors 2 and 5 and that in the facts and circumstances of the case, the principles of natural justice are violated. It is next contended that the salary disbursement officer of the judgment debtors 2 and 5 is not within the limits of the jurisdiction of the court of execution and that the office of the said officer i.e., the garnishee is situated in Vijayawada of Krishna District and that when the disbursement officer is not within the limits of the jurisdiction of the Court of execution, the Court of execution ought not to have ordered attachment of salaries of the judgment debtors and that the Court below ought to have seen that the judgment debtors 2 and 5 are only guarantors/sureties for the 1st respondent's debt and that the Decree Holder did not make any efforts to first proceed against the 1st judgment debtor for recovery of the decree debt and that therefore, the order impugned is liable to be set aside.

4. The learned counsel for the judgment debtors 2 and 5 mainly raised two contentions. It was first contended that the order of attachment and the further order directing issuance of attachment warrants against the salaries of the judgment debtors 2 and 5 without issuing prior notices to them and without giving an opportunity of hearing to them is illegal, irregular and against the principles of natural justice.

5. Dealing first with the first contention, it is to be noted that the decree was obtained on 18.04.2011 and the petition for execution was filed on 31.10.2011 i.e., within a period of two years after the date of the decree. Rule 22 of Order XXI which contemplates issuance of notice to show cause against execution in certain cases clearly lays down that where an application for execution is made more than two years after the date of the decree, a notice to show cause against the execution shall be issued to the

person against whom execution is applied for. But, in the case on hand, since the execution petition is filed well within a year after obtaining the decree, the contention that the trial Court ought to have issued notices to the judgment debtors 2 and 5 requiring them to show cause as to why the decree could not be executed against them, needs no countenance.

6. The second contention is that in the execution petition filed seeking attachment of the salaries of the judgment debtors 2 and 5, the Court below had failed to take notice of the fact that the office of the salary disbursement officer is at Vijayawada and that the said officer is not within the limits of the jurisdiction of the Court of execution at Tadepalligudem; Hence, the order directing the attachment of the salaries of the JDrs 2 and 5 made by the Court below ignoring the fact that the salary disbursement officer/garnishee of the judgment debtors 2 and 5 is not within the local limits of the court's jurisdiction is illegal and is liable to be set aside.

7. The judgment debtors are admittedly employees of the South Central Railway, i.e., Indian Railways. In this context, it is necessary to refer to Sub-rule (1) of Rule 48 of Order XXI of the Code, which reads as follows:

48. Attachment of salary or allowances of servant of the Government or railway company or local authority:- (1) Where the property to be attached is the salary or allowances of a servant of the Government or of a servant of a railway company or local authority, or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), the Court, where the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct, and, upon notice of the order to such officer as the appropriate Government may by notification in the Official Gazette appoint in this behalf,--

(a) Where such salary or allowances are to be disbursed within the local limits to which the Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the court the amount due under the order, or the monthly instalments, as the

case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time to be remitted to the Court.”

A plain reading of the provision would show that where the property to be attached is the salary or allowances of a servant of the Government or of a servant of a Railway company, the Court where the judgment debtor or disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the court may direct; and, upon notice of the order to such officer concerned, he shall withhold and remit to the Court the amount due under the order or monthly instalments as the case may be. In view of the plain language of the Section, the contention that the judgment debtors' disbursement officer is not within the local limits of the jurisdiction of the Court of execution, and therefore, the attachment is illegal cannot also be countenanced. Having regard to the facts and the provision of law this Court finds that the Court below is justified in passing the order which is impugned and that, therefore, the said order does not brook interference.

8. Viewed thus, this Court finds that there is no merit in the revision petition.

9. Accordingly, the Civil Revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

M. SEETHARAMA MURTI, J

15th February 2016
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