

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.4187 OF 2015

ORDER:

The Civil Revision Petition is filed against the docket order dated 14.07.2015 passed in E.P. No.31 of 2015. It was pursuant to the award passed under the Chit Funds Act, on 20.11.2014 in the Dispute No.199 of 2014, the E.P. No.31 of 2015 is filed before the Principal Senior Civil Judge, Gajuwaka, Visakhapatnam District against the judgment debtors (for short 'J.Drs') 2 to 4 out of four defendants—J.Drs for the relief of execution and recovery by attachment of their salaries for the award/ decretal amount of Rs.3,22,600/- with interest at 12% per annum on Rs.3,00,000/- from 24.04.2004 to 26.01.2015 that comes to Rs.3,36,065/- which includes decree costs and miscellaneous expenses claimed pursuant to the prayer.

2) Since no notice under Order XXI Rule 22 C.P.C is required to be given within two years of the award, the executing Court ordered attachment of salary, pending service of notice on J.Drs.1 to 4, directing the Garnishee of J.Drs.2 to 4. There is nothing demonstrated by the decree holder (for short 'D.Hr) herein including from perusal of the docket proceedings of the executing Court that the total E.P. amount of Rs.3,36,065/- to recover is apportioned respectively while ordering salary attachment against all the J.Drs 2 to 4.

3) A perusal of the docket proceedings shows that it is outcome of the non-application of the mind in ordering salary attachment for entire E.P amount, against each of J.Drs 2 to 4. The executing Court ought to have specified the total amount,

which is to be deducted from the salary of each of them out of total E.P. amount as otherwise it is unduly benefiting the D.Hr to release what is more than due of the decree under execution.

4) Undisputedly, salary of J.Drs.2 and 3 is under deduction at Rs.10,000/- per month and there is so far not effected salary attachment of J.Dr.4 for want of service on garnishee since J.Dr.4 is transferred from the given address of garnishee and place of working to a new place. The J.Dr.4, who served with notice maintained the present revision by showing the D.Hr and the J.Drs.1, 3 and 4 also as revision respondents.

4) A perusal of the docket proceedings of the lower Court shows there was an inadvertence further in making absolute the attachment ordered against J.Drs.2 and 3 vide order dated 27.03.2015. That is also a non-application of judicial mind for non service on the J.Dr.3 effected, as can be seen from the docket proceedings dated 24.02.2015 and 27.03.2015. No doubt, the subsequent docket proceedings dated 09.06.2015 shows directing issue of reminder for the pay particulars of J.Dr.4, while posting the matter to 14.07.2015 and noting that J.Dr.3 appeared through advocate and filed counter and the docket was signed by the learned Senior Civil Judge and the same is struck off and again endorsed subsequent to it that counter of J.Dr.2 as if filed and adopted by J.Drs.1, 3 and 4 and posted the matter to 14.07.2015.

Even from this, the learned Senior Civil Judge ought to have set-aside the earlier order making attachment absolute for once the salary attachment made absolute, there is no meaning in keeping the execution petition pending for docket explosion but for to close statistically.

5) Here, as pointed out earlier the learned Senior Civil

Judge committed mistake in issuing the warrant against salary of three J.Drs for each of the decree amount including costs of Rs.3,36,065/- instead of apportioning, if at all, to issue separate salary attachment against all at a time for not even simultaneously of one after another, for not to continue for more than 24 months. for all the same. Thereby, the attachment order made absolute against the J.Drs is to be set-aside directing the learned Senior Civil Judge to enquire into the matter from the counter/ objections of the J.Drs and pursuant to the interim attachment in force and to pass a detailed and reasoned order specifying to the garnishee supra of all or any of the J.Drs to deduct permissible portions from the salary (if no subsisting attachments). The respective sums to deduct from all shall not exceed E.P amount and that too, for maximum of 24 months from the combined reading of Section 60 C.P.C but for if at all giving liberty to file further execution petition for any subsequent interest till the proportionate amounts deducted towards full satisfaction respectively.

6) Accordingly, the revision is disposed of, by allowing to that extent by setting aside the order making absolute the salary attachment of JDrs 2 & 3 while continuing the interim attachment order pending enquiry and liberty is given to J.Dr.4, who is revision petitioner herein to file his objections before the executing Court and participate in the enquiry for further orders to be passed against him and other J.Drs as per law and as indicated above. There is no order as to costs of the revision. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.22.07.2016

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