

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5820 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 03.11.2016 passed in E.A.(SR) No.8695 of 2016 in E.P.No.90 of 2015 in O.S.No.228 of 2013 on the file of the Principal Senior Civil Judge, Madanapalle, Chittoor District, wherein and whereunder the trial Court returned the petition on the ground of maintainability.

2) The revision petitioner is the decree holder, respondent Nos.1 and 2 are the judgment debtors and respondent Nos.3 and 4 are the garnishees in E.P.No.90 of 2015.

3) For the sake of convenience, the parties hereinafter are referred to as arrayed in E.P.

4) The facts in issue are as under:

5) The decree holder filed O.S.No.228 of 2013 for recovery of money against judgment debtors. The said suit was decreed on 13.07.2015. As the judgment debtors failed to discharge the decretal amount, the decree holder filed E.P.No.90 of 2015 seeking attachment of the salary of the judgment debtors. The said E.P. was allowed on merits and the trial Court ordered attachment of an amount of Rs.7,428/- from the salary of judgment debtor No.1 and Rs.13,045/- from the salary of judgment debtor No.2 for a period of twenty four months commencing from the pay bill of April, 2016 till

the discharge of the entire E.P.amount on payment of process. Subsequently, the decree holder paid the process and the salary attachment warrants were also served to the garnishee. After service, the said E.P. was closed on 26.07.2016. Enquiries made by the decree holder revealed that the judgment debtors managed the garnishee in not attaching and sending their salary to the E.P. Account and as such the decree holder was advised to file a petition to issue show-cause notice to the garnishee. The decree holder filed E.A.(SR) No.8695 of 2016 seeking issuance of a show-cause notice to the garnishee as to why he has not sent the attached salary. On 03.11.2016 the trial Court returned the said application with the following endorsement:

“How the petition is maintainable without pending of E.P. Explain the same with correct provision of law.”

6) The decree holder resubmitted the same on 04.11.2016 with the following endorsement:

“The E.P. was closed after service of prohibitory orders to the garnishee of the judgment debtors and the petition is maintainable under Order 21 Rule 46 (A) of C.P.C. to issue show-cause notice to garnishee of the judgment debtors as to why they are no sent the attached salary amount.”

7) The trial Court again returned the said application stating that “Previous query dated 03.11.2016 is not complied with. Hence, returned.”

8) Aggrieved by the same, the present Civil Revision Petition is filed.

9) Learned counsel for the petitioner mainly submits that after issuance of prohibitory orders only the E.P. was closed. In spite of service of prohibitory orders, the garnishee of the judgment debtors could not comply with the same and as such the petitioner filed an application to issue show-cause notice to the garnishee of the judgment debtors.

10) Order 21, Rule 46A CPC which deals with notice to garnishee reads as under:-

"R.46A. Notice to Garnishee.- The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so."

11) Order 21 Rule 46-B deals with order against garnishee, which reads as under:

(B) Order against garnishee: Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution and does not appear and show cause in

answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him.

12) In *British Transport Co. Ltd., v. Suraj Bhan and others*¹ a Division Bench of Allahabad High Court held as under:

“It is only after proceedings for attachment under Order 21, Rule 46, C. P. C. have been taken that the further garnishee proceedings under Rules 131 to 140 of Order 21, C. P. C. introduced by this Court can be resorted to. It is under these latter rules that garnishee proceedings are actually taken and garnishee orders are made. Rule 131 introduced by this Court in Order 21, C. P. C. mentions that the power for calling upon the garnishee to appear before the Court and to show cause why he should not pay or deliver in the Court the debt due from him is to be exercised after there has been an attachment under Rule 46 of Order 21, C. P. C. This order for garnishee proceedings is thus in pursuance of the order of attachment and the power to order and to make the attachment having once vested in the Court at Agra that Court would be further competent to continue the proceedings and issue directions under Rule 131 of Order 21, C. P. C.”

13) In view of the judgment referred to above the Court has power to call upon the garnishee to appear before the Court and to show cause as to why he should not pay or deliver in the Court the debt due from him and the same has to be exercised only after there has been an attachment. Admittedly in this case, there has

¹ AIR 1963 All 313

been order of attachment of the salary of the judgment debtors. Having regard to the above, this Court is of the view that rejection of the request of the petitioner for issuing notice to the garnishee, appears to be incorrect.

14) Accordingly, the C.R.P. is allowed and the Senior Civil Judge, Madanapalle, is directed to number the E.A. and dispose of the same in accordance with law. There shall be no order as to costs.

15) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

20.12.2016
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JUSTICE C. PRAVEEN KUMAR