

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.2804 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, 1949, is filed by the revision petitioner against the order dated 26.04.2016, passed in Execution Petition No.192 of 2015 in Original Suit No.361 of 2014 by the Senior Civil Judge, Vizianagaram, (for short, 'the trial Court'); wherein the trial Court allowed the petition under Order XXI Rule 54 of C.P.C., making absolute the order of attachment effected on 19.11.2015, and also issued warrant of attachment, under Order XXI Rule 64 of C.P.C.

The revision petitioner herein is the judgment debtor – defendant and the respondent herein is the decree holder - plaintiff in O.S. No.361 of 2014.

For convenience of reference, the parties hereinafter will be referred to as the petitioner and respondent.

The brief facts of the petition are that the respondent filed a money suit for recovery of debt, which was decreed by the trial Court on 20.10.2014, for an amount of Rs.2,44,266/- together with subsequent interest and costs. Since the petitioner has not discharged his liability, the respondent sought for attachment of the petition schedule property and, accordingly, the executing Court attached the property on 19.11.2015 and, during the pendency of proceedings in E.P. No.192 of 2015, the attachment effected on 19.11.2015 was made absolute and issued warrant of attachment under Order XXI Rule 64 of C.P.C.

Learned counsel for the petitioner further submits that the petition schedule property does not belong to him and, therefore, the attachment is liable to be raised. The other ground is that the petitioner has filed three petitions before the trial Court *i.e.*, under Order IX Rule 13 – for setting-aside the *ex-parte* decree passed in O.S. No.361 of 2014, under Section 5 of the Limitation Act, to condone the delay, and under Order XXI Rule 26 of C.P.C., to stay all further proceedings in E.P. No.192 of 2015. The learned counsel for the petitioner advanced arguments on these two points and sought to set-aside the impugned order.

Learned counsel for the respondent contended that since the petitioner had taken a plea that the suit schedule property does not belong to him, he is not entitled to seek setting-aside of the impugned order of attaching the suit schedule property.

Perusing the material available on record, and after hearing the arguments of

learned counsel for both the parties, the sole point that arises for consideration in this Revision Petition is:

Whether there are sufficient grounds to set-aside the impugned order, passed by the trial Court?

POINT: Admittedly, the respondent filed O.S. No.361 of 2014, before the trial Court, for recovery of the debt under three different promissory notes and the same was decreed in his favour on 20.10.2014 directing the petitioner to pay the decretal amount to a tune of Rs.2,44,266/-. As none of the parties preferred any Appeal against the said judgment, the respondent filed Execution Petition for the reliefs stated hereinbefore.

Upon hearing the arguments of both counsel, and perusing the material available on record, including the attachment endorsement dated 23.11.2015, the trial Court allowed the Execution Petition making the order of attachment, which was effected on 19.11.2015, absolute while ordering issuance of warrant of attachment under Order XXI Rule 64 of C.P.C.

Aggrieved by which, the petitioner preferred this Revision Petition stating that he does not know about filing of the suit in O.S. No.361 of 2014 till receiving of the summons in E.P. No.192 of 2015 and, as no prior notices were served to him in O.S. No.361 of 2014, immediately, after receiving the summons he came to know about *ex-parte* decree passed in O.S. No.361 of 2014 and, during pendency of the Execution Petition, he had filed G.R. Nos.142, 143 and 144 of 2016 in E.P. No.192 of 2015, to set-aside the *ex-parte* decree in O.S. No.361 of 2014, a petition under Section 5 of the Limitation Act to condone the delay and a petition to stay all further proceedings in the Execution Petition.

It is further submitted that the trial Court, without considering these three petitions, proceeded further in disposal of the Execution Petition and erroneously passed the impugned order making absolute the attachment which was effected on 23.11.2015 simultaneously issuing warrant of attachment under Order XXI rule 64 of C.P.C.

Learned counsel for the petitioner submits that the trial Court without disposing of these three petitions allowed the Execution Petition, which is not in accordance with the provisions of Order XXI of C.P.C., and therefore, sought to set-aside the impugned order.

Learned counsel for the respondent made appearance in this case and

contended that in the counter filed in E.P. No.192 of 2015 that the petitioner stated that the property does not belong to him, and as he even failed to plead and prove as to whom the schedule mentioned property belongs to, although the burden of proof heavily rests on him. The trial Court had passed the impugned order, which is in accordance with law, and there is no illegality in the impugned order.

On consideration of the respective submissions of the learned counsel for both the parties, and on perusing the material available on record, it is obvious that the petitioner had filed three petitions *vide* G.R. Nos.142, 143 and 144 of 2016 in E.P. No.192 of 2015 immediately after receiving summons from the trial Court, but the trial Court without disposing of these petitions proceeded further for execution of the decree. In the event of success in those petitions, there will be multiplicity of proceedings, if execution of decree is completed. Therefore, unless these petitions are disposed of by the trial Court, the execution proceedings should not be proceeded with.

The order of the trial Court, *prima-facie*, shows that it has not referred to any of the documents or oral testimony of the witnesses in arriving at the conclusion in granting the relief in E.P. No.192 of 2015 but, simply, based on the pleadings of both sides, brushing aside the aspect of the contention raised by the petitioner that the property does not belong to him, and without deciding that issue, erroneously, proceeded further in granting the relief holding that the petition schedule property belongs to the petitioner.

In view of the facts and circumstances of this case, it is appropriate for the trial Court to dispose of the three petitions before proceeding further to dispose of the E.P. No.192 of 2015 to avoid multiplicity of proceedings.

In the result, the Civil Revision Petition is allowed, setting aside the impugned order dated 26.04.2016, directing the trial Court to dispose of the three petitions filed *vide* G.R. Nos.142, 143 and 144 of 2016 in E.P. No.192 of 2015 and, thereafter, to dispose of the E.P. No.192 of 2015 in O.S. No.361 of 2014, afresh, in accordance with law, un-influenced by any of the observations made hereinabove, within a period of one month from the date of receipt of a copy of this order. No order as to costs.

In consequence, miscellaneous petitions, if any, pending in this revision shall stand closed as infructuous.

G. SHYAM PRASAD, J

Date: 22-07-2016.

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