

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Smt. Justice T.Rajani
Civil Revision Petition No.940 of 2017

Date: 28.02.2017

Between:

Dupati Sundaram and 3 others

... Petitioners

and

M/s.Anantha Laxmi Chit Fund Pvt. Ltd.,
Jangaon, rep. by its Managing Director/
Foreman Sri Maryala Ashok and 5 others

... Respondents

Counsel for the Petitioners: Mr.P.Prabhakar Reddy

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Revision Petition arises out of Order, dated 09.12.2016, in EP.No.43 of 2015 on the file of the Senior Civil Judge at Jangaon.

We have heard Mr.P.Prabhakar Reddy, learned Counsel for the petitioners, and perused the record.

The petitioners have stood as sureties for the loan secured by respondent No.2, who has died and in whose place respondent Nos.3 to 5 were brought on record as his legal representatives. As the principal borrower failed to repay the amount received in chit from respondent No.1, the latter has secured an award from the Registrar of Chits and based on the Certificate issued by him, respondent No.1 has filed Execution Petition No.43 of 2015 before the lower Court seeking attachment of salaries of the petitioners.

The EP was resisted by the petitioners on the ground that they are only sureties whereas respondent No.2 was the principal borrower, who left behind respondent Nos.3 to 5 as his legal heirs, and that though the principal borrower possessed certain properties, respondent No.1 has directly proceeded against them without first trying to recover the money from respondent Nos.3

to 5. This plea of the petitioners was rejected, and in our view, rightly by the lower Court.

The law is well settled that the liability of the surety is co-extensive with that of the principal borrower and that an option is always available to the decree holder to proceed against either the principal borrower or the sureties or against both. In this view of the matter, we do not find any jurisdictional error in the order of the lower Court rejecting the objections of the petitioners and ordering attachment of their salaries.

The learned Counsel for the petitioners submitted that the lower Court has not specified that the attachment is subject to Section 60 of the Code of Civil Procedure, 1908 (CPC). Though there is no specific reference to the said provision, whenever attachment of salaries is made, the disbursing authority is bound to follow the provisions of Section 60 CPC, which exempt certain parts of the salary from attachment. We, therefore, while declining to interfere with the order of the lower Court, make it clear that the attachment order passed by the lower Court will be subject to the provisions of Section 60 CPC.

As regards the submission of the learned Counsel for the petitioners that the period of attachment has not been specified

by the lower Court, as the EP is still pending, the petitioners shall be free to approach the lower Court by making appropriate applications seeking clarification of the impugned order on all aspects including the one raised by them as recorded above.

Subject to the above observations, the Civil Revision Petition is disposed of.

As a sequel to disposal of the Civil Revision Petition, CRPMP.No.1251 of 2017, filed by the petitioners for interim relief, is disposed of as infructuous.



(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 28th February, 2017
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