

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.2591 of 2017

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, came to be filed assailing the order dated 30.01.2017 passed in OEP No.110 of 2016 in O.S.No.167 of 2015 by the Principal Senior Civil Judge, Madanapalle.

The facts leading to filing of this revision are as follows:

The respondent herein is the plaintiff-decree holder, who filed O.S.No.167 of 2015 for recovery of Rs.8,15,667/- with interest and the same was decreed in favour of the petitioner vide judgment dated 08.09.2016. Alleging that, in spite of having sufficient means to satisfy the decree, the petitioner-judgment debtor, who was working as School Assistant in Z.P. High School, Kurabalakota Village and Mandal and getting a monthly salary of Rs.65,000/-, has not discharged the amounts due under the decree, O.E.P.No.110 of 2016 came to be filed seeking attachment of salary of the judgment debtor till realization of the decretal amount. Vide impugned order, the Executing Court allowed the execution petition ordering attachment of Rs.11,200/- per month from the salary of the respondent for 24 months commencing from the pay bill of February, 2017, or till discharge of the entire EP amount, whichever is earlier. Aggrieved by the same, present revision came to be filed by the judgment debtor.

Heard Sri J.Seshagiri Rao, learned counsel for the petitioner, and Sri Mahadeva Kanthrigala, learned counsel for the respondent. With their consent, the Civil Revision Petition is disposed of at the stage of admission itself.

It is stated that during pendency of EP proceedings, the defendant filed an appeal vide A.S.No.13 of 2017 before the Court of II Additional District Judge, Madanapalle, wherein, vide order dated 27.01.2017 in I.A.No.56 of 2017, the appellate Court granted interim stay of judgment and decree dated 08.09.2016 passed by the trial Court.

Learned counsel for the petitioner would submit that the factum of granting of stay by the appellate Court was brought to the notice of the trial Court by way of memo dated 28.01.2017, but, in spite of the same, the impugned order came to be passed by the Executing Court on 30.01.2017, ordering attachment of salary of the petitioner.

Learned counsel for the respondent would submit that the order dated 27.01.2017 passed in I.A.No.56 of 2017 was an *ex parte* order and that steps are being taken to get the stay vacated. He further submits that there is a serious doubt as to whether the memo said to have been filed by the petitioner herein was filed by the trial Court on 28.01.2017 or not, as the copy filed along with material papers in the present revision does not contain endorsement to that effect.

As seen from the record, by order dated 27.01.2017 the appellate Court granted stay of execution of judgment and decree dated 08.09.2016 and the said fact is not disputed by both the parties. That being the position, the trial Court ought not have ordered attachment in EP. When the stay granted by the appellate Court is in force, the trial Court cannot order execution of E.P. It is also brought to the notice of this Court that steps are being taken to

get the interim stay granted by the appellate Court either vacated or modified.

Having regard to the above, the Civil Revision Petition is disposed of keeping O.E.P. No.110 of 2016 in O.S.No.167 of 2015 on the file of Principal Senior Civil Judge's Court, Madanapalle, in abeyance till the further orders are passed by the appellate Court i.e. II Additional District Judge, Madanapalle, in A.S.No.13 of 2017.

Miscellaneous petitions pending in this revision, if any, shall stand closed. No costs.

21.08.2017
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JUSTICE C. PRAVEEN KUMAR

