

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**CRP No.3782 of 2010**

**ORDER:**

This civil revision petition is filed against the order dated 23-07-2010 passed in EP No.167 of 2010 in OS No.1907 of 2008 by the Principal Senior Civil Judge, Ranga Reddy District. By the order impugned, the trial Court ordered attachment of retirement benefits of the petitioner, who is defendant no.1 in the suit.

2. Petitioner's counsel states that the suit was decreed ex-parte and the petitioner has also filed a petition to set aside the ex-parte decree with a petition to condone the delay in filing the petition to set aside the ex-parte decree.

Petitioner's counsel also states that under Section 60 (1) (g) of CPC, gratuity cannot be attached and the trial Court lost sight of this aspect of the matter. He lastly contended that when once a petition to set aside the ex-prate decree is filed, the trial Court ought not to have proceeded with the EP proceedings. In support of his contentions, learned

counsel relied on the decisions of the Supreme Court in **RADHEY SHYAM GUPTA vs. PUNJAB NATIONAL BANK**<sup>1</sup> and a decision of this Court in **V.DIVAKARA RAO vs. V. SRINIVASA RAO**.<sup>2</sup>

3. Though notice served, none appears for respondents. From a perusal of Section 60 (1) (g) of CPC, gratuity from out of the retriial benefits, is not liable to be attached. The same is the ruling of the Supreme Court in the **Radhey Shyam Gupta's** case and this Court in **V. Divakara Rao's** case observed that when judgment debtor approach the Court to set aside the ex-parte decree, further proceedings in the EP have to be stayed till application filed under Order 9, Rule 13 or petition filed under Section 5 of the Limitation Act is disposed of or for a reasonable time.

4. In the light of the above, the order impugned is unsustainable and it is accordingly set aside. The trial Court is directed to dispose of the above EP proceedings

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<sup>1</sup> (2009) 1 SCC 376

<sup>2</sup> 2004 (5) ALD 626

after issuing notices to the parties considering the above aspects. It is needless to mention that it is expedient to dispose of the petition filed under Section 5 of the Limitation by the petitioner, if not already disposed of, including the petition filed under Order 9, Rule 13 CPC, to set aside the ex-parte decree, if any.

5. The civil revision petition is allowed to the extent indicate above. Miscellaneous petitions, if any pending shall also stand disposed of. No order as to costs.



**A.RAJASHEKER REDDY, J**

Dated: 10-08-2017  
NRG

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