

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 978 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C., challenging the order dated 23.12.2016 passed in E.P.No.178 of 2014 in O.S.No.476 of 2012 on the file of the Additional Senior Civil Judge, Tirupati, wherein and whereunder the trial Court directed the T.T.D., Tirumala to deposit an amount of Rs.1,88,250/- into Court within one month from the date of the order and TTD shall pay interest @ 12%p.a. on the prohibitory order amount of Rs.1,97,899/- from the date of filing of E.P.No.178 of 2014 till the date of deposit the amount into Court.

2) The facts in issue are as under:

The first respondent herein filed O.S.No.476 of 2012 on the file of the Additional Senior Civil Judge, Tirupathi, for recovery of the amount from the deceased C.Eswaramma. The said suit was decreed on 21.04.2014. Pending the said suit, I.A.No.912 of 2012 came to be filed for attachment of an amount of Rs.3.00 lakhs, which was allowed and a copy of the same served on the garnishee ie. Deputy Executive Officer, Pay & Accounts-I, TTD, Tirupati, on 15.09.2012. After the decree, the first respondent/ decree holder filed E.P.No.178 of 2014 to

send the leave salary of the deceased-Eswaramma from the garnishee, which was already attached on 15.09.2012 and made absolute later.

The averments in the affidavit filed in support of the E.P. would show that in spite of serving the prohibitory order on the garnishee, the leave salary amount of the deceased Eswaramma was adjusted towards the dues of TTD and the balance amount of Rs.9,649/- was paid to the son of the deceased. Since the garnishee violated the prohibitory orders passed by the Court and adjusted the death benefits of the deceased-Eswaramma, the decree holder filed the present E.P.

3) A counter came to be filed by the garnishee stating that the verification of the records would show that there were two attachment orders, one in I.A.No.912 of 2012 in O.S.No.476 of 2012 on the file of the Additional Senior Civil Judge, Tirupati, for attachment of Rs.3,00,000/- and another in O.E.P.No.227 of 2012 in O.S.No.587 of 2000 on the file of the Principal Junior Civil Judge, Tirupati, for attachment of Rs.74,157/-. Subsequently, O.E.P.No.227 of 2012 was terminated. It is stated that the order passed in I.A.No.912 of 2012 was not brought to the notice of the higher authorities. Since the said order was not noticed due to oversight, orders were obtained from Chief Executive Officer, Tirupati, for recovery of excess pension of Rs.97,350/- and Employees Bank dues for

Rs.90,900/- . The said amount of Rs.97,350/- was recovered for the encashment of earned leave of deceased and the balance amount of Rs.9,649/- was paid to the son of the deceased. It is stated that the garnishee was under a bonafide impression that the attachment orders of the Court has to be given effect from the payable amounts to the judgment debtors, after adjusting the amount due to T.T.D. The other death-cum-terminal benefits were already paid to the family of the deceased. It is admitted in the counter that the orders passed on 26.09.2015 to send the attachment amount of Rs.3.00 lakhs (encashment of earned leave) was received by the garnishee on 09.10.2015. Immediately thereafter, a letter was addressed to the son of the deceased to pay back of Rs.9,469/- which was repaid in the month of April, 2016. It is said that the garnishee never disobeyed the orders of the trial Court and further stated that the garnishee was under a bonafide impression that the attachment orders of the Court has to be given effect from the amounts payable to the judgment debtors after adjusting the due to T.T.D. Having regard to the above, it is said that there was no wilful negligence on the part of the garnishee.

4) After considering the rival contentions, the trial Court allowed the E.P. directing the T.T.D. Tirumala to deposit Rs.1,88,250/- in to the Court within a month from the date of

the order and the T.T.D. was further directed to pay interest @ 12% p.a. on the prohibitory order amount of Rs.1,97,899/-, from the date of filing E.P. till the date of deposit the amount. Assailing the same, the present revision is filed.

5) Learned counsel for the petitioner would submit that the banks have got a lien over the debts and hence the adjustment of leave salary towards the debts of Co-operative Bank is correct and valid and the said adjustment is not at all in violation of the prohibitory orders. He further submits that T.T.D. is neither the garnishee nor is aware about the prohibitory orders dated 26.10.2012 and as such the order is per se illegal. He further submits that the Court below did not consider the scope of Section 171 of the Contract Act before passing the impugned order.

6) The same is opposed by the learned counsel for the respondent contending that when the authorities were informed about the prohibitory order passed by a competent civil Court, the petitioner herein ought not to have adjusted the amount towards the debts of the Co-operative society/ dues to T.T.D. If really, they were aggrieved by the said order, they could have obtained a clarification from the court before adjustment. Though the plea in the counter was that it was done by oversight but now a different stand is taken in this revision, which was not part of the defence taken in the

counter filed before the Court below. Having regard to the facts in issue, he submits that there is no illegality and impropriety in the order passed by the Court below.

7) In order to appreciate the rival arguments, it would be useful to refer to Order XXI Rules 46-A and 46-B of C.P.C. which reads as under:

"R.46A. Notice to Garnishee.- (1) 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.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that, in the belief of the deponent, the garnishee is indebted to be judgment-debtor.

(3) Where the garnishee pays in the 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 the execution, the Court may direct that the amount may be paid to the decree holder towards satisfaction of the decree and costs of the execution.

R.46.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.

8) A reading of the said provision clearly indicates that in case of a debt which has been attached under Rule 46 of Order XXI of C.P.C., the Court may on an application of the attaching creditor, issue notice to the garnishee, directing them to deposit the said amount into the Court, the debt due from him to the judgment debtor or as may be sufficient to satisfy the decree and costs of execution. Rule 46-B of Order XXI of C.P.C. further says that if the garnishee fails to deposit the amount, the Court may issue notice directing the garnishee to comply with the terms of notice.

9) Admittedly, in the instant case, an order came to be passed in I.A.No.912 of 2012 prohibiting the garnishee from paying a sum of Rs.3,00,000/- to the respondent therein or his men to whom so ever it may concern. While ordering attachment of Rs.3.00 lakhs, prohibited and restrained the garnishee from paying the amount. The said order was communicated to the garnishee.

10) O.E.P.No.178 of 2014 came to be filed on 26.09.2015 requesting the garnishee to send the amount to the Court. The counter filed before the Court below clearly shows that the amount was adjusted towards the due to the Co-operative society/ T.T.D., after the order of the attachment was served

on the garnishee. The plea now taken is that the said order was not communicated and by over sight the same was not looked into. Now in this C.R.P., the counsel for the petitioner states that since the banks have got lien over their debts, adjustment of leave salary towards co-operative bank debts is correct. He however admits that T.T.D. is not aware of the prohibitory order and as such it cannot be said that there was any violation of the order.

11) It is to be noted here that the garnishee herein cannot be equated to bank. The judgment of the Karnataka High Court in Smt. K.S.Nagalambika v. M/s. Corporation Bank, Virajpet and another¹, relied upon by the learned counsel for the petitioner was a case where the first plaintiff therein deposited a sum of Rs.30,000/-, as a fixed deposit in the Bank in her individual name and second plaintiff deposited a sum of Rs.30,000/- and Rs.20,000/- as fixed deposit in the same bank. All the deposits matured on 23.10.1994. The second plaintiff borrowed a sum of Rs.20,000/- on the security of his individual deposit and the maturity value of the same was Rs.44,034/-. After deducting the loan amount with interest, an amount of Rs.8,700/- was to be paid to him by the defendant bank. But the Bank refused to pay the said amount on the ground that he stood as a surety, for the loan borrowed by his second wife Nagamma and the

¹ AIR 2000 Karnataka 201

said amount was adjusted towards the loan account of said Nagamma. The contention of the defendant therein was that the bank has got a general lien and therefore, they are entitled to adjust the amount towards the loan account. The trial Court held that Section 171 of Contract Act is clear and categorical that unless a contract to the contrary is established by the plaintiffs, the bank's right of lien will have to be accepted. Challenging the same, a revision came to be filed before the High Court of Karnataka. Relying upon the judgment of the Apex Court in *Syndicate Bank v. Vijay Kumar*², Karnataka High Court held as under:

“As rightly pointed out by the trial Court, Section 171 of the Contract Act gives a general lien to the bank and it has got to be recognized. Further, in my opinion, the dictum of Supreme Court referred to above is certainly and directly applicable to the facts of this case.”

12) Learned counsel for the petitioner also relied upon the judgment of the Apex Court in *Syndicate Bank (2 supra)*. It was a case where two F.D.R.s were duly discharged by signing on the reverse of each of them, by the judgment debtor and were handed over along with the covering letters on the bank's usual printed forms on 17.09.1980, at the time of obtaining the guarantee. Dealing with such circumstances and taking into consideration the principles laid down in the judgments

² AIR 1992 SC 1066

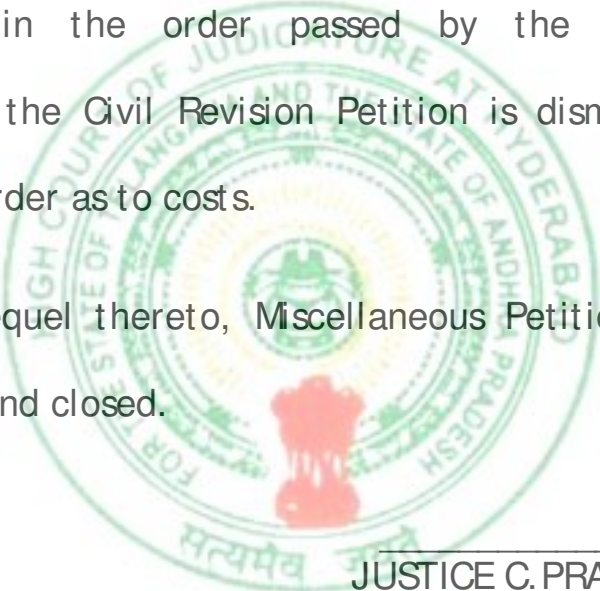
referred to therein, it was held that the “appellant bank has a general lien over the two F.D.R.s.” However, it is stated that the two letters executed by the judgment debtor created a general lien in favour of the appellant bank over the two F.D.R.s. It is further stated that having regard to the mercantile custom, as judicially recognized, the banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business. Having regard to the above, the findings of the High Court were found fault with. Insofar as attachment of two F.D.R.s is concerned, it was held that the banker’s lien cannot by itself be a bar for such attachment. It was further held that the banker as a garnishee, when an attachment notice is served, has to appear before the Court and obtain suitable directions for safeguarding its interest.

13) Such being the position, even assuming that the petitioner herein has a lien over the property, the question is whether the petitioner was justified in releasing the amount without obtaining any clarification from the Court. First of all, in my view the petitioner cannot be equated to the bank for claiming a general lien over the benefits which got accrued to the deceased, more particularly leave encashment. Even assuming that such a lien exists, the judgment of the Apex Court referred to above, clearly states that pursuant to the

notice issued, the garnishee has to appear before the Court and has to obtain clarification of the order, for safeguarding its interest. The same is very much clear from Order XXI Rule 46-A of C.P.C. Therefore, in the absence of such a procedure being adopted by the garnishee, adjusting the amounts towards the dues to T.T.D. in spite of receiving an order of attachment from the Court, is definitely improper and incorrect.

14) Having regard to the above, I see no illegality or irregularity in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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



JUSTICE C. PRAVEEN KUMAR

21.07.2017
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