

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1786 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C., challenging the order dated 24.10.2016 passed in O.E.P.No.42 of 2016 in O.S.No.441 of 2015 on the file of the Principal Junior Civil Judge, Madanapalli, wherein and whereunder the trial Court dismissed the E.P.

2) The facts in issue are as under:

The petitioner herein filed O.S.No.441 of 2015 on the file of the Principal Junior Civil Judge, Madanapally for recovery of Rs.2,94,800/- . The said suit was decreed on 06.01.2016. Thereafter, the decree holder filed O.E.P.No.42 of 2016 seeking attachment of salary of the respondent-judgment debtor and also sought for issuance of prohibitory order to the garnishee. The averments in the affidavit filed in support of the E.P., would show that the judgment debtor is working as Accounts Officer at LIC, Devanahalli, Karnataka and getting an amount of Rs.80,000/- towards salary. It is also stated that though the judgment debtor is having capacity to pay the decretal amount, he is postponing the same.

3) A counter came to be filed by the judgment debtor stating that he is getting meagre amount by way of salary and already there are two attachments to his salary. It is stated that there is no attachable salary for recovery of decree amount.

4) After considering the rival contentions, the trial Court dismissed the E.P. Assailing the same, the present revision is filed.

5) Learned counsel for the petitioner would submit that the judgment debtor is getting Rs.80,000/- per month and as per Section 60 of C.P.C. 2/ 3rd of the salary can be deducted towards recovery of arrears and that the Court below failed to follow Section 60 of C.P.C.

6) Learned counsel for the respondent would submit that as the earlier E.P. filed by the decree holder is pending there is a bar under Section 60 C.P.C. in filing a second E.P.

7) As seen from the material on record, the petitioner filed O.E.P.No.26 of 2016 against the judgment debtor and the same is pending. It is to be noted that already there is an attachment of Rs.7,248/- from the salary of the judgment debtor and O.E.P.No.26 of 2016 which was filed by the decree holder against the judgment debtor for realisation of the decree amount is pending. While dismissing the E.P. the executing Court held that the decree holder can realise the amount in E.P.No.26 of 2016. It is to be noted that when the gross salary of the petitioner is Rs.94,603/- and net salary is Rs.33,796/-, definitely in my view, the amount claimed in both the E.P.s could be adjusted in compliance of Section 60 of C.P.C. But the trial Court simply dismissed the E.P. without conducting an enquiry as to the means of the judgment debtor. Hence, the order of the Court below dismissing the E.P. needs to be set aside as the

same came to be passed without conducting any enquiry, under Section 60 of C.P.C.

8) Accordingly, the order under revision is set aside and the matter is remanded back to the Court below with a direction to conduct an enquiry afresh, ascertain the means of the judgment debtor as per Section 60 of C.P.C. and pass appropriate orders in accordance with law. There shall be no order as to costs.

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

09.08.2017
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JUSTICE C. PRAVEEN KUMAR