

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRP No.5691 OF 2009

ORDER:

This revision petition is filed challenging the docket order dated 17.08.2009 passed in E.P.No.55 of 2008 in O.S.No.48 of 2006.

The order under challenge reads as under:

“Garnishee present and gave D.D. for Rs.2,40,168/- in E.P.No.54 of 2008 in O.S.No.63 of 2005 by sharing other attachments. Hence E.P. closed.”

Learned counsel for the petitioner submits that the retirement benefits of the revision petitioner have been attached. He referred to para 12 of the execution petition, which reads as under:

“The decree-holder prays that the Hon'ble Court may be pleased to consider the decree Xerox copy filed along with this petition and in E.P.No.12 of 2008 in O.S.No.48 of 2006 and issue notice to the Judgment-debtor and attach the retirement benefits of the judgment-debtor according to Order 21 Rule 52 of Civil Procedure Code which is in the hands of the judgment-debtor's employer, i.e., garnishee, i.e., Medical Officer Primary Health Center, Seethampalli, Kaikaluru Mandalam, and send for the same and pay to the decree-holder for realization of the decretal debt in the interest of justice.”

I do not find any illegality in the order passed by the executing Court for attachment of retirement benefits. It is appropriate to refer to Order XXI Rule 52 of CP.C., which reads as under, for clarity.

“Attachment of property in custody of Court or public officer:-

Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interest in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

It is submitted that the retirement benefits shall be deposited in the account of the judgment-debtor and then only it is liable for attachment. I do not see any valid reason in the said argument. As per the order passed by the executing Court, amount is attached lying with the garnishee. There is no illegality in the order passed by the executing Court.

The Civil Revision Petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 22.02.2017
ssp

GUDISEVA SHYAM PRASAD,J

