

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P. Nos. 5036 of 2013 and 544 of 2014

COMMON ORDER:

These Civil Revision Petitions, under Article 227 of the Constitution of India, are filed challenging the orders dated 10.06.2013 and 14.02.2013 passed in I.A. Nos.342 of 2013 in O.S. No.428 of 2013 on the file of II Additional Senior Civil Judge, Warangal and in I.A. No.116 of 2013 in O.S. No.94 of 2013 by the Principal Senior Civil Judge, Warangal respectively.

2. Heard, Sri Prakash Buddarapu, learned counsel for petitioners and Smt.S.A.V.Ratnam, learned counsel for respondent No.1.

3. The Respondent in C.R.P No.5036 of 2013 is plaintiff, who filed O.S. No.428 of 2013 for recovery of amount of Rs.1,14,400/- from the defendants on the basis of promissory note dated 10.05.2012 for Rs.90,000/- executed by Bodapudi Dharma Rao during his lifetime allegedly and agreed to repay the same together with interest. In spite of requests made by plaintiff, defendants have not paid any single pie during the life time of Bodapudi Dhrama Rao.

4. The respondent No.1 in C.R.P. No.544 of 2014 is plaintiff, who filed the O.S. NO.94 of 2013 for recovery of amount of Rs.1,50,000/- from the defendants on the basis of promissory notes dated 01.09.2012 and 21.09.2012 for Rs.80,000/- and Rs.50,000/- respectively executed by Bodapudi Dharma Rao during his lifetime

allegedly together with interest. In spite of requests made by plaintiff, defendants have not paid any single pie during the life time of Bodapudi Dhrama Rao.

5. Thereafter, they individually constrained to file the suit for recovery of the amount and filed petition under Order XXXIX Rule 2 (ii) read with Section 151 C.P.C to restrain the authorities to withhold an amount of Rs.1,14,400/- and 1,50,000/- respectively out of the death and retirement benefits, leave encashment and other allowances of late Bodapudi Dharma Rao. Accordingly, the trial Court passed orders on 10.06.2013 and 14.02.2013 until further orders.

6. Aggrieved by the two orders, the respondents 1 to 3 filed C.R.P. No.5036 of 2013 and C.R.P. No.544 of 2014 under Article 227 of the Constitution of India, mainly contending that deceased Bodapudi Dharma Rao was working as an employee in Singareni Collieries and the amount payable to the legal heirs of deceased Bodapudi Dharma Rao i.e., petitioners herein cannot be attached or withhold by the Department, since those amounts are exempted under Section 60 of Code of Civil Procedure.

7. During hearing, learned counsel for the petitioners while reiterating the contentions, drawn the attention of this Court on *T.Prabhakar Rao vs Registrar of Co-operative Societies, Govt. of A.P., Gruhakalpa and others*¹ to support of his contention and based on the principles laid down in the above

¹ 2003 (6) ALT 97

judgment, the petitioners sought to vacate the direction issued by the Courts below.

8. Learned counsel for respondent contends that under Section 60 (1) (g) C.P.C gratuity amount payable to employees is not liable for attachment but other amounts can be attached. The respondent/ plaintiff filed the suit for recovery of amount and injunction under Order XXXIX Rule 2 (ii) to direct the employer of Singareni Collieries to withhold the amount of Rs.1,50,000/- from the amounts payable consequent to the death of Dharma Rao and the same is ordered. He placed reliance on *T.Prabhakar Rao* (supra) wherein this Court held at para No.10 that under Section 60 of the Code of Civil Procedure, certain properties are exempted from attachment and sale in execution of decrees.

9. Learned counsel for petitioners relied on *K.Murugesan vs E.Ulaganthan and another*², wherein Madras High Court discussed about the exemption under Section 60 (1) (g) of C.P.C and provisio thereto exempting gratuity payable to the employee on retirement when payable to him or the amount passes to the hands of legal heirs of employee after retirement and referred the judgment of Supreme Court in *Radhey Shyam Gupta vs Punjab National Bank and Ann*³ wherein the Apex Court held that under Section 60 (1) (g) CPC, the attachment of retrial benefits, such as, pension and gratuity is unsustainable and even if such benefits were received by the retired employee in cash, it would not lose their

² AIR 2009 Madras 169

³ AIR 2009 SC 930

character and will continue to be covered by proviso (g) to Section 60 (1) of the Code.

10. Thus in view of the law declared by Apex Court, the gratuity is exempted under Section 60 (1) (g) C.P.C. Similarly, the other amounts whatever exempted under Section 60 are not liable for attachment in execution of decree or otherwise and therefore the orders passed by the Courts below are liable to be limited to the extent of the amounts not covered by Section 60 C.P.C.

11. Having regard to the above, the orders passed by the Courts below are modified directing the employer of Singareni Collieries to withhold the amounts of Rs.1,14,400/- and Rs.1,50,000/- out of the retri al or death benefit of Dharma Rao payable to the petitioners subject to Section 60 C.P.C.

12. Accordingly, the Civil Revision Petitions are disposed of.

13. Consequently, Miscellaneous Petitions, if any, pending in these revisions shall stand closed. There shall be no order as to costs.

M.SATYANARAYANA MURTHY,J

Date:05.06.2017
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