HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3322 of 2010

ORDER :

Heard both sides.

2. Perused the grounds of revision and the impugned order of the learned Principal Junior Civil Judge, Avanigadda, (the Executing Court), dated 19.04.2010, in E.P.No.46 of 2010 in execution of the decree in O.S.No.113 of 2003.

3. The attachment of the pension of the respondent/judgment-debtor sought under Order XXI Rule 46-A C.P.C., the Court directed attachment of the judgment-debtor's S.B.Account No.011302010754 of State Bank of India, Main Branch, Avanigadda, the garnishee and ordered to send the amount for realization of the decree debt that remained unsatisfied after earlier E.P.No.229 of 2005 and earlier E.P.No.81 of 2008. In earlier E.P.No.229 of 2005 and E.P.No.81 of 2008 respectively, the attachment sought is the S.B. Account of the judgment-debtor and the amount Rs.44,695/- received there from into that account on 22.07.2009 and E.P.No.81 of 2008 was consequently closed on 22.09.2008. The judgment-debtor later changing the account to which the pension benefits to be credited. The counter of the judgment-debtor is that the pension cannot be attached and the prohibitory order of the Court is unsustainable. The Court after hearing both sides observed that as per the decision of this Court in

S.Nagappa v. K.P.Hanumappa[1]**,** a pension amount is not liable for attachment as held by the Apex Court in **Union of India v. Jyothi Chit Fund and Finance and others**[2]**,** where it is observed Provident Fund contributions and pensionary benefits of the Government servant cannot be attached till they are received by the employee and the Government has locus standi to object to the attachment of the said amount. Whereas, the amount is not lying with employer, but already deposited to the savings account of the judgment-debtor/pensioner, it stands as the amount of the judgment-debtor to attach. The payment made to the bank account of the subscriber is thus a payment to the employee as bank is not agent of the of the employer. The other decision referred as **Radhey Shyam Gupta v. Punjab National Bank and another**[3], where it is observed the pension and gratuity converted into fixed deposits could be attached, it is there from ordered that the attachment is sustainable. Decree holder already realized considerable amount, thereby continuation of attachment causes injustice to the judgment-debtor in rising the same by the Court below, which is the subject matter of impugnment in the revision.

4. This Court in C.R.P.No.3532 of 2015 in **Balavenkatagari Rama Muni Reddy v. K.Fakruddin**, dated 21.09.2015, referring to Jyothi Chit Fund and Radhey Shyam Gupta categorically held that the moment the amount is credited to the account of the judgment-debtor,

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[1] 2004 (4) ALD 294
[2] 1976-II-LLJ-69
[3] 2009 (1) ALD 79 (SC)

it is the amount of the judgment-debtor, thereby the bar under Section 60 of the Civil Procedure Code of exemption of the pensionary benefits from attachment has no application. Once such is the case, if at all the attachment to be sought is for the particular amount lying in the bank account, which is sustainable and that the amounts in future to be deposited to the bank account cannot be sought for attachment. It is not like any fixed salary of an employee to be attached to be earned as the moment the pensionary benefits deposited into the bank account of the employee, then only it ceases the bar of exemption and till then the amount is under the control of the employer and thereby it is not liable for attachment, where as such a bar is not there for salary.

5. Having regard to the above, there is nothing to interfere with the order of the lower Court but for clarifying the same, if at all in future any attachment sought for.

6. Accordingly, the civil revision petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

5th December 2017.

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