

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.5655 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/judgment debtor aggrieved by the order dated 17.10.2016 in E.P.No. 4/2015 in O.S.No. 63 of 2010 on the file of Junior Civil Judge, Sidhout, Kadapa, where under the executing court has by setting aside the objections raised by the petitioner/judgment debtor ordered attachment of Rs. 1,08,110/- belong to judgment debtor by way of prohibitory order and making it absolute.

2. Heard learned counsel for petitioner Sri Ch. Janardhan Reddy and Sri Kosa Jaganmohan Reddy, learned counsel appearing for respondent.

3. The tri pronged objections are taken against the impugned order by the learned counsel for the petitioner/JDR.

(1) No prior notice was given to the JDR before ordering attachment as contemplated under Order 21 Rule 22 (1) C.P.C., though EP was filed more than two years after the decree was passed.

(2) Since insolvency petition IP No. 5/2013 was pending on the file of Senior Civil Judge's Court, Kadapa, E.P. is not maintainable.

(3) The Savings Bank Account No. 1491424 was opened by the JDR only for the purpose of receiving the

pension and as such, the amount lying in that account is the pension amount of JDR, which is not liable for attachment by virtue of Section 60 CPC.

4. It must be noted that the above objections were raised before the executing Court also but were negated as had no substance. Hence, it has now to be seen whether the executing Court was right in declining the contentions raised.

Point :1

5. The first contention is concerned, the respondent/decreed holder obtained a decree against the judgment debtor on 18.10.2011 in O.S.No. 63/2010, but however, he filed E.P. on 22.9.2014, that is, admittedly more than two years after passing the decree. As per Order 21 Rule 22(1) CPC, if a decree holder files an execution petition, more than two years after the date of decree, the Court executing the decree shall issue a notice to the judgment debtor to show cause why the decree should not be executed. This provision is enacted in the CPC obviously with intent to give an opportunity to Judgment debtor to comply with the decree and not to put him in surprise with regard to old dated decrees. However, Order 21 Rule 22(2) CPC shows, the prior show cause notice can be dispensed with by the execution Court, if for reasons to be recorded by it, it considers that issuance of such notice would cause unreasonable delay and defeat the ends of justice.

6. In the instant case, the impugned order shows that at the time of filing of EP, the decree holder filed a petition under Order 21 Rule 22(2) C.P.C., praying the Court to dispense with the issuance of show cause notice, as contemplated under Order 21 Rule 22 (1)(a) CPC, for the reason that if such notice was ordered, there was every possibility of judgment debtor taking away the amount lying in his S.B. account, in which case, the execution would be frustrated. Considering the said request as reasonable one, the execution Court has allowed the said petition in E.A.No. 23 of 2014 and admitted the EP. A perusal of the certified copy of E.A.No. 23/2014, produced by learned counsel for respondent decree holder would show that a petition under Order 21 Rule 22 (2) C.P.C, was filed by the decree holder, wherein the execution Court passed order dated 24.10.2014 to the effect that the said Court felt that if notice was ordered, the purpose of filing the EP would be defeated.

7. In the light of the above factual scenario, the first contention of the petitioner/judgment debtor cannot be sustained.

Point: 2

8. The second contention raised by the JDR is that since I.P.No. 5 of 2013 was pending on the file of Senior Civil Judge's Court, Kadapa, E.P. is not maintainable.

9. Dismissing the above contention, the execution Court has observed that though IP No. 5 of 2013 was filed by the judgment debtor, nonetheless the judgment debtor did not obtain any protection order from the insolvency Court

prohibiting his creditors from proceeding against him pending insolvency petition. In that view of the matter, the executing Court held that mere pendency of IP No. 5 of 2013 was not a bar to proceed with the E.P. This Court finds no illegality in the said observation.

Point: 3

10. The third contention of judgment debtor is to the effect that the S.B Account No. 1491424 was opened by him for depositing his pension amount and therefore, the said amount is protected in terms of Section 60 C.P.C. This contention was also negated by the executing Court on the observation that once the pension amount was credited to S.B account of the concerned employee, it loses its character as pension and attains the character as his personal amount and thereby, the same could be attached. The executing Court relied upon the decision reported in **S. Nagappa vs. K.P.Hanumappa**¹ and also the decision of Hon'ble Apex Court in **Union of India vs. Jyothi Chit Fund and Finance and others**².

11. Since the finding given in this regard by the executing Court is legally and factually justified, the same cannot be found fault. Thus, none of the grounds raised by the petitioner/judgment debtor is legally tenable to set aside the impugned order and therefore, this Court finds no merit in the Civil Revision Petition.

¹ 2004(2) ALT 364

² AIR 1976 SC 1163

12. Accordingly, the Civil Revision Petition is dismissed confirming the order dated 17.10.2016 passed by the executing Court in E.P.No. 4 of 2015 in O.S.No. 63 of 2010. There shall be no order as to costs. As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 21.04.2017
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