HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1484 of 2017

ORDER:

1) Assailing the order dated 03.02.2017 passed in O.E.P.No.85 of 2016 in O.S.No.369 of 2015 on the file of the Principal Senior Civil Judge, Madanapalli, the present Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure.

2) The facts in issue are as under:

The respondent/D.Hr., herein filed O.S.369/2015 which was decreed on 10.03.2016, for recovery of Rs.3,36,600/- with interest and costs. The judgment debtor failed to discharge his debt, in spite of repeated requests made by the decree holder. It is also to be noted here that the D.Hr., got attached the E.P. schedule property on 02.11.2015 in the suit stage, which was made absolute on 10.03.2016. Hence, the D.Hr., filed the E.P. requesting the court to put the schedule property for sale so as to realize the decree debt.

3) After receipt of notice, a counter came to be filed by the J.Dr., denying the allegations made. It is urged that the judgment debtor has no income of her own and is depending on her sister and sons. It is further stated in the counter that the she is a cardiac patient and that she requires money for medical treatment. It is further stated that though the decree holder though fully aware

that E.P. schedule property cannot be brought to sale filed the E.P., only to harass the J.Dr.

4) After considering the rival submissions made, the said E.P. was allowed, which is the matter of challenge in the present case.

5) The main ground urged by the learned counsel for the petitioner/J.Dr., is that since I.P. 40 of 2015 came to be filed much prior to the disposal of the suit the decree holder cannot seek sale of the said property. In support of his plea he relies upon a judgment of this court reported in **K.Sivanarayana v. G.Durga Sesharatnam**[1]. The same is strongly opposed by the learned counsel for the respondent/D.Hr., contending that the I.P. application filed by the petitioner herein does not anywhere refer to the property attached in the suit. Relying upon Section 52 of the Provincial Insolvency Act, the learned counsel for the respondent would submit that since the procedure as required therein, was not followed, there is no bar for sale of the said property, as the attachment was in the month of November, 2015 itself, which is much prior to the passing of the final order. Since the suit property is not part of the I.P. schedule and since the said issue was never raised before the trial court, it is urged that the petitioner is not entitled for any relief.

6) In order to appreciate the rival contentions it is to be noted that suit property was attached on 02.11.2015, i.e., pending the suit proceedings. The decree in O.S.369/2015 was passed on 10.03.2016.

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[1] 2000(1) ALD 767

Though I.P. was filed in the month of October 2015, the counter filed by the petitioner herein in E.P., is silent with regard to the pendency of the insolvency petition and also the provisions of the Insolvency Act.

7) Further, it is to be noted that in I.P.40 of 2015, the respondent herein was shown as first respondent therein and the schedule "B" property are two sarees worth Rs.600/- and chappals worth Rs.100/-. The said I.P. is silent about the existence of the property, which is subject matter of dispute now.

8) It is also not in dispute that pursuant to the order of the attachment passed, pending the suit, the court Amin went to the E.P. schedule property and attached the same in the presence of the witnesses and filed his report. The same is not challenged. The Encumbrance Certificate filed by the D.Hr., shows no encumbrances against the attached property, which is sufficient to show that the said property was free from any encumbrances. The only plea taken before the trial court was that the said property does not belong to the J.Dr., but no documents are filed to show as to whom the said property belongs.

9) The learned counsel for the petitioner/J.Dr., relied upon the judgment referred to above, wherein, a learned single judge of this court held that once an I.P. is admitted, all the properties of the insolvent gets pooled up so that if ultimately he is declared as

insolvent, further proceedings will be taken up in accordance with the provisions of the Act. The intention of the provision is obvious, to kept the assets of the insolvent in-tact.

10) But in the instant case, the plea of the petitioner in the trial court was that she is not the owner of the property. Such being the position, the question of pooling up the properties of the petitioner pending I.P. so as to distribute the same equally amongst the creditors, cannot be accepted. Apart from that, Section 52 of the Insolvency Act contemplates the procedure to be followed. Even assuming that the said property belongs to the petitioner, an application under Section 52 of the Insolvency Act has to be moved for vesting the property with the receiver and the same should be done by the Executing court. If there is no such application, the executing court can sell the property. It is further to be noted that the court which is executing the decree has to mention the fulfillment of conditions of the Section 52 of the Insolvency Act.

11) The E.P. schedule property has been attached before judgment i.e., on 02.11.2015 and the same was made absolute on 10.03.2016. As the petitioner did not challenge the attachment of the schedule property, he cannot now raise any objection after the said attachment was made absolute.

12) Therefore, in the absence of the any application being moved for vesting the property and having regard to the circumstances

referred to above, this court is of the view that the judgment relied upon by the learned counsel for the petitioner will not apply to the case on hand and the order under challenge warrants no interference.

13) Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending if any in this C.R.P., shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:19.07.2017
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