HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1736 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Section 115 of C.P.C. aggrieved by an order dated 25.10.2016 passed in E.A.No.62 of 2016 in E.P.No.9 of 2013 in O.S.No.62 of 2009 on the file of the III Additional District Judge, Tirupati, wherein the application filed by the judgment debtor No.2 to permit him to pay his share of liability and terminate the execution petition by raising attachment of the E.P. Schedule property, was dismissed.

2) The petitioner herein is the judgment debtor No.2, first respondent is the decree holder and respondent Nos.2 to 6 are judgment debtor Nos.1, 3 to 7. For the sake of convenience, the parties hereinafter will be referred to as arrayed in E.P.

3) The brief facts of the case are that the decree holder filed a suit for recovery of money, which was decreed against J.Dr.Nos.1 to 7 on 28.07.2012 for an amount of Rs.15,95,532/- together with interest at 12% on principal sum of Rs.14,00,000/- from the date of suit till the date of decree and at 6% on principal amount from the date of decree till the date of realisation. The decree also states that defendants 1 to 7 are jointly and severally liable to pay the said amount. As no money was paid, the decree

holder filed E.P.No.9 of 2013, for execution of the decree. All the judgment debtors were made as respondents in the said E.P. During the pendency of the said E.P., the petitioner herein, who is the judgment debtor No.2 filed E.A.No.62 of 2016 seeking permission of the Court to pay his share of liability and terminate execution petition by raising attachment of the E.P. schedule property. It is stated in the affidavit filed in support of the petition that the decree holder filed execution petition against judgment debtor No.2 for attachment of the petition schedule property for Rs.21,72,012/- by leaving the other judgment debtors including the principal borrower, only to harass him and to cause mental agony. It is further stated that there is collusion between the decree holder and other judgment debtors, as such the decree holder did not make any effort even to proceed against the principal borrower or other judgment debtors.

4) The decree holder filed counter contending that there is no collusion between the decree holder and other judgment debtors. The liability of the petitioner is also joint and several along with principal debtor, as such he is liable to pay the entire decretal amount. During pendency of the suit, the property in question was already attached in I.A.No.1163 of 2009. After decreeing the suit, the decree holder having no option, filed the execution petition seeking attachment of the property. Later, sale notice was also

ordered. Hence, he pleads that the petitioner is not entitled for any relief.

5) After considering the rival submissions, the trial Court dismissed the said E.A. Challenging the same, the present Civil Revision Petition is filed.

6) The only contention raised by the learned counsel for the petitioner is that the decree-holder could not have proceeded against the guarantor leaving the principal borrower. The same is opposed by the learned counsel for the respondents herein stating that in view of the recent judgments of the Hon'ble Supreme court, the decree-holder has the option to recover the money either against the guarantor or against the principal borrower. In C.R.P.No.2980 of 2009, a Division Bench of this Court, by its order dated 15.06.2010, after referring to all the judgments on this subject overruled the earlier view taken in **Venkata Ramanaiah's case (2009(1) L.S.25 (A.P.)** and held that the decree-holder is entitled to recover the money against all or any of the judgment-debtors.

7) Similarly in **Bejjanki Peddirajam v. M/s. Lavanya Chit Fund Pvt. Limited**[1], it was held that the decree-holder can proceed against any one or all the judgment-debtors for realization of the decretal amount without proceeding against the principal debtor at the first instance when the decree is joint and several liabilities.

[1] 2014(4) ALT 163

Further, in **Ram Kishun and others v. State of U.P., and others**[2], the Apex Court held that "recovery of the public dues must be made strictly in accordance with the procedure prescribed by law. The liability of a surety is co-extensive with that of principal debtor. In case there are more than one surety the liability is to be divided equally among the sureties for the unpaid amount of loan."

8) In ***M.Rama Rao v. Sriram City Union Finance Limited***[3] a Division Bench of this Court held as under:

> "It is not in dispute that the award was passed jointly and severally against the petitioner as well as the principal borrower. The said award passed by the arbitrator has become final because it has not been challenged. Section 128 of the Indian Contract Act, 1872 reads as followed:
>
> Surety's liability: The liability of the surety is co-extensive with that of principal debtor, unless it is otherwise provided by the contract.....
>
> From the above provision, it is clear that the word co-extent is an objective for the word 'extent' and it can relate only to the quantum of the principal debt. Hence, surety or guarantor is equally liable to pay the principal debt.
>
> In view of the law laid by this Court coupled with Section 128 of the Indian Contract Act, it is clear that it is for the decree holder to proceed against the principal borrower or surety/guarantor. Hence, we hold that the decree holder can proceed to recover the amount in accordance with law against principal borrower or guarantor or both simultaneously."

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[2] 2012(5) ALT 39 (SC)
[3] (2014) 6 ALT 69 (DB)

9) In **Punyamurthula Venkata Viswa Sundara Rao v. Margadarsi Chit Fund Pvt. Ltd., Hyderabad and others**[4], the Division Bench of this Court held as under:

> "One ruling of the Supreme court reported in the case of Maharashtra State Electricity Board, Bombay v. Official Liquidator, High Court, Ernakulam and others (AIR 1982 SC 1497), can be cited, to say that the courts also understood the liability of the surety, the same lines. Hence that would leave us without any demur in concluding, that it is completely the prerogative of the decree-holder, as to against whom he should proceed, for realizing the debt."

10) As held by the trial court, the surety cannot dictate terms to the creditor as to how he should pursue his remedies for recovery of the money. Hence, in view of the judgments referred to above, the decree-holder can proceed against any one of the judgment debtors and he is not required to proceed only against the principal borrower at the first instance. Therefore, the order passed by the trial Court is strictly in accordance with law and the same warrants no interference.

11) Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Consequently, the Miscellaneous Petitions pending if any shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:13.06.2017
GM

[4] 2017(3) ALD 387 (DB)