

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS. 1708 & 1709 OF 2015

COMMON ORDER:

As both the civil revision petitions arise out of a common order, they are heard and dealt together.

Both these civil revision petitions are filed aggrieved by the orders passed on 19.03.2015 in E.A.No.373 of 2012 in E.A.No.96 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 and E.A.No.374 of 2012 in E.A.No.97 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 passed by the Senior Civil Judge, Razole, East Godavari District.

The petitioner is a third party, filed an application under Order I Rule 10 and Section 151 of C.P.C to implead him as 2nd respondent in E.A.No.96 of 2012, filed by the 1st respondent against the 2nd respondent and for consequential amendment. The petitioner filed a suit in O.S.No.97 of 2012 against the 2nd respondent for recovery of amount on the foot of a promissory note. Along with the said suit, the petitioner filed I.A.No.554 of 2012 and sought for attachment of the amounts lying in deposit to the credit of the suits O.S.Nos.58 & 59 of 1997 on the file of Senior Civil Judge, Razole. As the petitioner came to know that the 1st respondent is seeking attachment of the said amounts, he impleaded the 1st respondent as 2nd respondent in the said I.A.No.554 of 2012 in O.S.No.97 of 2012. The 1st respondent suppressed the said fact that he is also seeking attachment of the said amounts, has been trying to take away the amounts from O.S.Nos.58 & 59 of 1997 without his knowledge. If the

1st respondent is allowed to withdraw the said amount, he will be put to much loss and he will be deprived of realization of the amount in his suit and therefore, sought for impleading himself as 2nd respondent in E.A.No.373 of 2012.

The 1st respondent filed counter resisting the petition affidavit contents stating that the 2nd respondent borrowed an amount of Rs.1,25,000/- from him on 10.05.1995 and executed a promissory note agreeing to repay the same as and when demanded by him. But, the 2nd respondent failed to discharge the debt due to the 1st respondent and as such, the 1st respondent was constrained to file suit and also filed I.A.No.298 of 1997 to attach the property of the 2nd respondent and the said suit was decreed on 03.10.2000 and the said decree attained finality. Thereafter, the 2nd respondent did not discharge the debt due to him, thereby, the 1st respondent filed E.P.No.26 of 2001 to bring the property of the 2nd respondent to sale which he got attached in the suit I.A.No.298 of 1997.

While the matter stood thus, the property got attached by him was decreed for specific performance of agreement of sale by the Court, as such, the 1st respondent did not press E.P.No.26 of 2001 on 02.04.2002. Later, the 1st respondent filed execution petition to attach the amount deposited by the decree holders in O.S.No.s58 & 59 of 1997 to the credit of the respective suits on the file of Senior Civil Judge's Court, Razole, the attachment was ordered, subject to result of I.P.No.2 of 2002 filed by the 2nd respondent and her husband. Thus, the amount deposited by the decree holders in

O.S.Nos.58 & 59 of 1997 was attached. The 2nd respondent and her husband preferred appeal before the II Additional District Court, Amalapuram and the same was dismissed on 19.04.2010. However, in view of the pendency of I.P.No.2 of 2002 and appeal preferred there against, he could not execute the decree, since the amount attached in the suits in O.S.Nos.58 & 59 of 1997 were kept in fixed deposit, thereby the 1st respondent filed E.A.No.96 of 2012 to encash the F.D.R which was deposited in O.S.No.58 of 1997. The 1st respondent also filed another application in E.A.97 of 2012 to encash the amount deposited in O.S.No.59 of 1997. On the strength of these two applications, the Court issued notice to the 2nd respondent. While so, the petitioner colluded with the 2nd respondent and her husband, brought into existence of the suit to defeat the claim of the respondent and to prevent him to execute the decree.

After hearing both the counsel, the Trial Court dismissed E.A.No.373 of 2012 in E.A.No.96 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 and E.A.No.374 of 2012 in E.A.No.97 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 by assigning its own reasons.

Aggrieved by the orders passed on 19.03.2015 the present civil revision petitions are filed on the ground that the executing court ignored the attachment already effected and such decree if any, obtained is binding on the 1st respondent and when the petitioner attached the amount lying to the credit of O.S.Nos.58 & 59 of 1997, the Trial Court would have allowed the petition impleading the petitioner as 2nd respondent, but ignored the loss being caused to the

petitioner in the event, the 1st respondent is allowed to withdraw the amount, erroneously passed the orders under challenge.

During hearing, this Court took a serious objection about maintainability of petition under Order I Rule 10(2) of C.P.C in execution proceedings. Learned counsel for the petitioners would contend that the Division Bench of this Court and Single Judge of this Court laid down the law in a different set of circumstances and the principles laid down in the judgments of the Division Bench of this Court in **Mir Sardar Ali Khan and others v. Special Deputy Collector, Land Acquisition (Industries), Hyderabad¹, Chaganti Lakshmi Rajyam and others v. Kolla Rama Rao²** and law declared by a Single Judge of this Court in **Vaddi Govinda Rajulu (died) by L.Rs. v. Kasapa Venkata Ramanamurthy and others³** are not applicable, as the facts of the case varies from one another.

Learned counsel for the petitioner contended that when the petitioner attached the property and also amount lying to the credit of the suit, if he is impleaded, he can claim ratable distribution, if any amount is remained and he is a proper and necessary party to the executing proceedings. But the Trial Court did not consider the request of the petitioner erroneously and prayed to allow both the revision petitions.

Before going to decide the maintainability of the application

¹ 1973 A.P. 298

² 1998 (1) ALT 621 (D.B.)

³ 1999 (1) ALD 106

under Order I Rule 10(2) of C.P.C, I would like to state hereunder the scope of Article 227 of the Constitution of India.

Since the powers of this Court under Article 227 are limited, this Court cannot exercise such power and the duty of this Court is to see that the Courts shall not exceed its power that conferred on it or exercise power based on extraneous material to pass any order and to keep the subordinate courts within its bounds of jurisdiction.

This Court while exercising power under Article 227 can exercise its discretion to interfere in the following circumstances:

- a) When the inferior court assumes jurisdiction erroneously in excess of power.***
- b) When refused to exercise jurisdiction.***
- c) When found an error of law apparent on the face of record.***
- d) Violated principles of natural justice.***
- e) Arbitrary or capricious exercise of authority or discretion.***
- f) Arriving at a finding which is perverse or based on no material.***
- g) A patent or flagrant error in procedure.***
- h) Order resulting in manifest injustice.***
- i) Error both on facts and law or even otherwise.***

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India:

- a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;

- e) to correct an error of law, not being an error apparent on the face of the record;
- f) to interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice.

Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction and such power can also be exercised *suo motu*.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in “**State (N.C.T. Of Delhi) vs Navjot Sandhu@Afsan Guru**”⁴, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts, only in certain circumstances.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

⁴ 2003 (6) SCC 641

Undisputedly, the execution petitions are pending before the Senior Civil Judge, Razole for realization of the decree debt filed by the 1st respondent. But, the present petitioner is none other than the close relative of the 2nd respondent allegedly filed I.A.No.554 of 2012 in O.S.No.97 of 2012, attached the amount lying in deposit to the credit of O.S.Nos.58 & 59 of 1997 before attachment under Order XXXVIII Rule 5 of C.P.C only the 1st respondent also got attached the property which is the subject matter of O.S.Nos.58 & 59 of 1997 for realization of the decree debt in the suit filed by him in E.P.No.26 of 2001. But, it was not pressed on 02.04.2002 and again got attached the amount lying to the credit of O.S.Nos.58 & 59 of 1997, subject to I.P.No.2 of 2002. He also filed E.A Nos.96 & 97 of 2012 in both the suits for encashment of FDRs lying to the credit of the above suits to realize the decree debt. Thus, undisputedly, the execution proceedings alone are pending before the Court, whereas, the petitioner/third party wanted to come on record in the execution proceedings, as he got attached the amount lying to the credit of O.S.Nos.58 & 59 of 1997.

Order I Rule 10(2) C.P.C deals with adding or striking out of parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and

completely to adjudicate upon and settle all the questions involved in the suit, be added.

Thus, in view of the language used in Order I Rule 10(2) C.P.C, the words, “**at any stage of the proceedings**” indicates all stages of the proceedings either in appeal stage or in the original stage. But, the last sentence of the rule made it clear that such party can be added only for effective and complete adjudication of all the questions involved in the “**suit**”. If the last sentence of Clause (2) is strictly adhered, its application is limited to suits only to decide all questions involved in the suit, but not in execution proceedings. On the other hand, it is discernable from the provision that, as a rule, the Court should not add any person as plaintiff/defendant in the suit, as the plaintiff himself is a master of the suit, he cannot be compelled implead third party to fight against him, he does not wish to fight and prosecute the proceedings. In fact, the 1st respondent is not claiming any relief in the above proceedings, but claiming relief against the 2nd respondent for realizing the decree debt by attaching the amount lying to the credit of the suit to this petitioner claiming to be a person having interest wanted to come on record.

Thus, from the principles laid down in the above judgments, a person who has got direct interest in the subject matter of the suit alone is entitled to be impleaded as a party, but not otherwise. In the present facts of the case, the entire proceedings on the original side are over and decree was obtained by the 1st respondent and proceedings in execution of the decree by filing an execution petition,

attached the property and when the 1st respondent filed a petition to encash the amount lying to the credit of O.S.Nos.58 & 59 of 1997 by way of FDRs, the present petition is filed having maintained silence for all these years. Therefore, the interest he had is only in the event of his success in the suit filed by the petitioner in the original suit. Then only he is entitled to recover the amount. Till then, the proceedings cannot be stalled. The petitioner wanted to come on record only in view of the attachment of amount lying to the credit of the suit, apprehending that his interest will be defeated in case the respondent is allowed to withdraw the amount. In such case, the remedy available to the petitioner is elsewhere.

In **Mir Sardar Ali Khan**¹ case, this Court took a specific view that Order I Rule 10 C.P.C is clear that the very purpose of Order I Rule 10(2) C.P.C is to add parties necessary or to enable the Court to effectively and complete adjudication of questions that are involved in the suit. The usage of the words “at any stage of the proceedings” in Clause (2) of Rule 10 of Order I manifests that the power vested in the Court under that provision can be exercised only when the proceedings are alive and still pending in suit. In other words, the application of Order 1 Rule 10(2) C.P.C should be confined only to cases where any proceedings are pending before the Court. The very purpose and object of this provision being to make any party a defendant or respondent, or plaintiff or appellant in a proceeding, in order to establish the Court to make an effective and complete adjudication itself of all the disputes in the case is over, this provision cannot be made use of by any party.

In **Chaganti Lakshmi Rajyam**² case, this Court specifically held that implead applications are not maintainable in execution proceedings. However, the same principle is reiterated in **Vaddi Govinda Rajulu**³ case.

The Apex Court in **Razia Begum v. Sahebzadi Anwar Begum & others**⁵ discussed the scope of Order I Rule 10(2) of C.P.C and held that the interest which the proposed party shall have in the suit to enable him to be impleaded therein, should be direct interest and not a commercial interest.

Similarly, in re, Ibrahim Haji, , Ramaswami J. held as follows:--

"Order 1, Rule 10(2), Civil P. C., confers wide discretion to the Court to meet every case of defect of parties but is subject to two limitations, viz., (1) that the Court has no power to join a person as a party if he could not have been originally impleaded under O. 1, R. 1, or R. 3, Civil P.C. and (2) that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved in the suit if persons who are sought to be impleaded have no subsisting right over the properties and they are sought to be impleaded only for the purpose of getting their evidence, and it would not be proper to make them parties to the suit and that the petitioner apprehension that they would be driven to the necessity of filing a separate suit against these persons is not a sufficient justification to compel the plaintiff to implead them as parties to the suit."

Later, the Madras High Court in Firm of **Mahadeva Rice and Oil Mills v. Chennimalai Gounder**⁶ laid down the following principle:

"I am of the opinion that the following tests may be formulated usefully as a guidance in the case of adding of parties under O. 1, R. 10, Civil P. C.:

⁵ 1958 AIR 886

⁶ AIR 1968 Mad 287

(1) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.

(2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;

(3) The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;

(4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and

(5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit."

The principle laid down by the Apex Court and Madras High Court is consistent, if the principle is applied to the present case, as on today, the petitioner had no direct interest, except contingent interest, as the petitioner became entitled to recover the amount only in case a decree is passed. Even if he wants to claim ratable distribution he has to file execution petition, till such time the petitioner is incompetent to make any claim. Hence, the interest of the petitioner as on today cannot be said to be direct.

Thus, in view of the law declared by the Division Bench of this Court and reiterated by the Single Judge of this Court, I have no hesitation to hold that the petition under Order I Rule 10(2) C.P.C is not maintainable in execution petition or proceedings. The remedy open to such person whose rights are being effected in execution of

decree is under different provisions of C.P.C, but not under Order I Rule 10. All the three judgments though in different situations, but the law declared in judgment is consistent and that Order I Rule 10(2) C.P.C is not applicable to the execution petitions pending before the executing court. Therefore, this Court is bound by those three judgments and by following those three judgments, I hold that application under Order I Rule 10(2) C.P.C cannot be maintained in execution proceedings. However, it is left open to the petitioner to resort to necessary legal remedies to claim any ratable distribution under Order XXI Rule 73 or by any other proceedings.

The Trial Court, though considered various aspects about collusion between the parties, etc, I need not go into those aspects, as the application under Order I Rule 10(2) C.P.C is not maintainable in execution proceedings, in view of the law declared by this Court in more than one perspective pronouncements. Hence, I find no ground warranting interference with the orders passed on 19.03.2015 in E.A.No.373 of 2012 in E.A.No.96 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 and E.A.No.374 of 2012 in E.A.No.97 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 passed by the Senior Civil Judge, Razole, East Godavari District by exercising power under Article 227 of the Constitution of India. Consequently, the civil revision petitions are liable to be dismissed.

In the result, both the civil revision petitions are dismissed, confirming the orders passed on 19.03.2015 in E.A.No.373 of 2012 in E.A.No.96 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 and

E.A.No.374 of 2012 in E.A.No.97 of 2012 in E.P.No.3 of 2003 in O.S.No.33 of 1997 passed by the Senior Civil Judge, Razole, East Godavari District.

Miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:01.06.2017

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