THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

%10.08.2017

CRP.NO.668 OF 2010

THE KERALA STATE CIVIL

SUPPLIES CORPORATION, REP. BY ITS MANAGING

DIRECTOR.

PETITIONER

AND

DHANALAKSHMI TRADERS, GRAND MERCHANTS AND

COMMISSION AGENTS, COACHIN AND ANOTHER.

RESPONDENTS

Counsel for the petitioner: Sri P.Vijaya Kiran
Counsel for the respondents : Smt. Chandana Madala

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- Head Note.
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?Cases Referred:

1. 2004(1) L.S. 39
2. (2007)4 SCC 795

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C.R.P.NO.668 OF 2010

O R D E R

The 2nd respondent herein filed suit in O.S.No.32/2000 on the file of I Additional District Judge, Guntur, against the 1st respondent for recovery of amount. By judgment and decree dated 13.10.2008, the suit was decreed. The judgment-debtor is a firm, having business transactions with the petitioner herein, the Kerala State Civil Supplies Corporation. The said Corporation is due certain amount of Rs.14,33,577/- to the judgment-debtor. Both the judgment-debtor and the petitioner herein, are having their offices at Cochin, Kerala State. As the 2nd respondent, obtained decree, filed the present E.P.No.111/2008 in O.S.No.32/2000 on the file of trial court, to send for the amounts from the garnishee – petitioner. The trial court by order and decree dated 23.10.2009, allowed the said petition. Aggrieved by the same, the garnishee – Corporation, filed the present revision.

2. From the averments made by the petitioner, it could be seen that against the 1st respondent – judgment debtor, number of suits have been filed in different courts in Guntur District, Andhra Pradesh, for recovery of amounts. In all the suits, the respective courts, passed orders to attach the amount due to the judgment-debtor from the petitioner – Corporation. The judgment-debtor is also due an amount of Rs.61,03,502-00 to Central Bank of India, M.G.Road, Ernakulam. The present judgment-debtor has executed an irrevocable power of attorney in favour of the said Bank to receive the amounts that are due to it from the parties in respect of which bills due to the judgment-debtor. Accordingly, the Bank filed O.A.No.434 of 2002 on the file of Debt Recovery Tribunal, Ernakulam for realization of the amount due to it, against the judgment-debtor and also made the present decree-holder and others, as parties. In these circumstances, the petitioner herein, filed inter-pleader suit in O.S.No.405/2004 on the file of Subordinate Judge, Ernakulam making the persons concerned, including the

present decree holder, as parties. The petitioner deposited the amount of Rs.14,33,577/- to the credit of the suit in O.S.No.405/2004. While disposing of the said suit, the Subordinate Court at Ernakulam, directed the petitioner to withdraw the amount lying to the credit of the suit and to deposit the same to the credit of the suit in O.A.No.434/2002 on the file of Debts Recovery Tribunal, Ernakulam. By final order dated 14.3.2006, the Debts Recovery Tribunal in O.A.No.434/2002 directed the petitioner herein to deposit the amount of Rs.14,33,577/- subject to attachment or any other prohibitory order issued by any court. The learned counsel for the petitioner submits that the petitioner has deposited the amount as directed by the Debts Recovery Tribunal to the credit of O.A.No.434/2002.

3. In the above back ground, coming to the case on hand, as noted above, the 2nd respondent – decree holder filed the present execution petition seeking to send for the amounts of the judgment-debtor, lying to the credit of the petitioner, who is the garnishee. By the impugned order, the trial court found that since the order of the Debts Recovery Tribunal directing the garnishee to deposit the amount, is subject to attachment or any other prohibitory orders issued by any court and that since there is already attachment order, the garnishee is not justified in depositing the amount to the credit of the suit before the Tribunal. With these observations, the trial court allowed the E.P. and ordered for sending of the amounts by the garnishee due to the judgment-debtor. Assailing the same, the garnishee – Corporation filed the present revision.

4. This court on 19.02.2010 while ordering notice before admission, granted interim stay.

5. The learned counsel for the petitioner submits that the judgment-debtor and the garnishee, who is the present revision petitioner, are having their business establishments at Cochin, in Kerala State. As per Section 39 (1)(a) of CPC, since the judgment debtor is not residing within the jurisdiction of the trial court which passed the decree, for the purpose of its execution, the executing

court has to send the decree to the competent court having jurisdiction where the judgment-debtor actually and voluntarily resides and carries on business. Under sub section (4) of Section 39, the court which passed the decree, has no jurisdiction to execute such decree against 'any person' or 'property' outside the local limits of its jurisdiction. He contends that as the garnishee is having its office at Cochin in Kerala State, i.e., outside the jurisdiction of the executing court, it has no jurisdiction to send for the amounts in the execution proceedings. Therefore, in view of sub sections 1 and 4 of Section 39, the court which passed the decree, has to send the decree to the court of competent jurisdiction where the judgment-debtor and garnishee resides and carries on business, for execution of such decree. In support of his contention, the learned counsel for the petitioner relied on the judgment of a learned single Judge of this court reported in ***ADITYA ELECTRONICS vs. M/S IMPEX LTD., & ORS.***[1] With these contentions, the learned counsel sought to set aside the impugned order.

6. The revision is of the year 2010 and the matter underwent several adjournments and today there is no representation for the respondents either in the forenoon or in the afternoon. In these circumstances, this court is inclined to dispose of the revision on merits.

7. The learned counsel for the petitioner agitated mainly on the ground of jurisdiction. Therefore, the said aspect of jurisdiction is required to be dealt with in accordance with law.

8. From the above, the undisputed facts are that the suit filed by the 2nd respondent herein in O.S.No.32/2000 on the file of I Additional District Judge Guntur, was decreed on 13.10.2008. The 1st respondent herein who is the judgment-debtor and the petitioner – garnishee, are residing and having their business establishments at Cochin, Kerala State and the amount that is ordered to be sent for in the execution petition, in the impugned order, is lying to the credit of the garnishee, at Cochin. Therefore, it is clear that the judgment –debtor in the

[1] 2004(1) L.S. 39

present case and also the garnishee are residing outside the jurisdiction of the court, which passed the decree. Section 39 (1)(a) and (4) of CPC, contemplates the procedure to be followed for execution of the decree, where the judgment-debtor or 'any other person' again whom execution is sought, resides outside the jurisdiction of the executing court. Sub Section 4 to Section 39 of C.P.C. was inserted by way of amendment by Act 22 of 2002 with effect from 1.7.2002. The relevant provisions under Section 39 of CPC are extracted as under for better appreciation:

> **39. Transfer of decree:**
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> (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another court of competent jurisdiction-
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> (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court or,
>
> . . .
>
> (4) Nothing in this section shall be deemed to authorize the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

A reading of the above provision would make it clear that under clause (a) of sub section (1) of Section 39, the court which passed a decree may, on the application of the decree holder send the decree for execution to another court of competent jurisdiction, where the judgment-debtor actually and voluntarily resides or carries on business. Under sub section 4 of Section 39, there is bar on the court which passed a decree to execute such decree against 'any person' or 'property' outside the local limits of its jurisdiction. The Hon'ble Supreme Court in ***MOHIT BHARGAVA v. BHARAT BHUSHAN BHARGAVA***[2], held that Section 39(4) as inserted by Act 22 of 2002 with effect from 1.7.2002 makes it clear that it is no longer a matter of discretion for the court which passed the decree either to proceed with the execution of the decree itself or to transfer it for execution to the court within whose jurisdiction the property is situate, that in a

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[2] (2007)4 SCC 795

case where Order 21, Rules 3 and 50 have no application, if the decree-holder wants to proceed against a property situate outside the jurisdiction of the court which passed the decree, he has to get the decree transferred to the appropriate court (the court in whose jurisdiction the property is situate) for execution on moving the executing court in that behalf. The relevant observation is as under:

> "7. There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing the decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorized by Order 21 Rule 3 or Order 21 Rule 48 of the code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. ***But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1-7-2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the code shall be deemed to authorize the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate."***
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> (Emphasis added)

9. A learned single Judge of this court in Aditya Electronics case (1 supra), considering the circumstances where the judgment-debtor and the garnishee therein were residing outside the jurisdiction of the executing court, held that where the debt payable is outside the jurisdiction of the executing court and the judgment-debtor and the garnishee are outside the jurisdiction of the court, the executing court is not competent to attach such debt and the power of the executing court can be exercised only when judgment-debtor or his property

is within jurisdiction of court with only one exception regarding attachment of salary. The relevant observation is thus:

> 32. As per the above rulings, a debt payable within the jurisdiction of the executing court can be attached even though the judgment-debtor is residing outside the jurisdiction of the Court. A debt payable outside the jurisdiction of the Court and when the judgment debtor and a garnishee are outside the jurisdiction of the Court, the executing Court is not competent to attach such debt.
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> 33. . .
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> 34. It is clear from the provisions of the Code of the Civil Procedure, that the powers of the Executing Court can be exercised only when the judgment debtor or his property is within the jurisdiction of the court with only one exception regarding the attachment of salary. As the judgment Debtor or the garnishee in whose custody the property of the judgment debtor is there are not within the jurisdiction of the lower Court, the order prohibiting the respondent Nos.4 to 7 – garnishee from making payment of the Judgment Debtor is beyond the jurisdiction of the court. Therefore, the lower court rightly held that the garnishee proceedings cannot sustain. In view of the above legal position and in view of the facts and circumstances of the case, there shall be no interference with the order of the lower Court."

10. In the present case, at the cost of repetition, the judgment-debtor is residing at Cochin and is having its business establishment at Cochin. The garnishee, the petitioner herein, who is due amounts to the judgment-debtor, is also having its office at Cochin. Therefore, under Section 39(1)(a) of CPC., the present executing court, on the application of the decree-holder, has to transfer the decree to the court of competent court having jurisdiction, where the judgment-debtors resides, for execution of such decree. The petitioner herein, who is the garnishee can be termed as 'any person' occurring in sub section 4 of Section 39, is also having its office at Cochin. Therefore in view of bar under sub section 4 of Section 39, the trial court cannot proceed against the garnishee at the court at Guntur, for the purpose of execution of the decree.

11. In view of the above facts and circumstances of the case and the provisions under sub sections (1) and (4) of Section 39 of CPC and the judgments of the Apex Court and the learned single Judge of this court, this court is of the considered view, that the present execution petition filed by the decree-holder before the court below, which passed the decree, is not maintainable and the said decree has to be transferred, as per the said provision,

to the court of competent jurisdiction for the purpose of execution of such decree. Without considering the objections raised by the petitioner in this regard, the court below erroneously allowed the execution petition by passing the impugned order and the same is liable to be dismissed.

12. It is brought to the notice of this court that the 2nd respondent – decree holder earlier filed similar application in E.A.No.388/2004 and the same was dismissed and suppressing the said fact, filed the present application.

13. For the foregoing reasons, the impugned order is set aside and the revision petition is allowed.

14. It is made clear that this order will not preclude the 2nd respondent – decree holder from taking appropriate steps for execution of the decree in accordance with law.

15. No order as to costs.

16. Miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date:10—08—2017

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Note:

L.R. copy to be marked.
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