

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2602 OF 2015

ORDER:

This Civil Revision Petition, under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC') is filed aggrieved by the order, dated 03.03.2015, in Execution Petition No.28 of 2015 in Original Suit No.180 of 2009 passed by the Senior Civil Judge, Gudivada.

2. The main contention of learned counsel for the petitioners is that no notice was issued to the petitioners before issuing salary attachment warrants; that the petitioners are only sureties and that the decree-holder has option to proceed against the principal borrower, who is having sufficient means to discharge the debt and hence, he prays to set aside the impugned order.

3. During hearing, learned counsel for the petitioners reiterated the said contentions, whereas Sri Maheshwar Rao Kuncham, learned counsle appearing for the respondents, supported the impugned order in all respects.

4. Admittedly, the decree obtained by the 1st respondent was for recovery of money and the petitioners are all sureties and the 2nd respondent is the principal borrower. The decree was passed making all the respondents liable jointly and severally and in such a case, it is for the decree holder to proceed against any one of the debtors since their liability is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract as per Section 128 of the Indian Contract Act, 1872. Therefore, the liability of the petitioners is co-extensive with that of the principal debtor i.e., the 2nd respondent herein and it is the choice of the creditor to proceed against any one of the judgment debtors when the decree was passed making them all

jointly and severally liable to pay decree debt. At best, the petitioners being sureties are entitled to claim contribution under Section 146 of the Indian Contract Act against co-sureties and claim right of indemnity under Section 145 of the Indian Contract Act. Therefore, merely because the 2nd respondent possessed both movable and immovable property, the decree holder cannot proceed against the present petitioners for realization of amount by filing Execution Petition under Order XXI Rule 48 CPC is without any substance. Thus, it is made clear that they are jointly and severally liable to pay the decretal amount.

5. The 2nd ground is that no notice was issued before ordering attachment of salary. Under Order XXI Rule 48 CPC, in fact, no such notice is contemplated and issuing attachment itself is a notice and the petitioners can appear before the Court and defend their case. But, instead of doing so, petitioners approached this Court directly under Section 115 CPC to revise the order and such power can be exercised only under three circumstances viz., where trial Court has not exercised the jurisdiction that vested on it or exceeded the jurisdiction which is vested on it or where the Court exercised its jurisdiction irregularly and illegally. But none of grounds are raised in the present petition. Therefore, the petition is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. However, it is open to the petitioners to appear before the Executing Court and raise their objections to the attachment of salary under Order XXI Rule 48 CPC. Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

JULY 27, 2017
YVL

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Date: 27.07.2017