

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6465 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the docket order, dated 01.04.2017, in E.P.No.51 of 2017 in O.S.No.56 of 2016 on the file of Principal Senior Civil Judge, Kothagudem, whereby the Executing issued attachment under Rule 48 CPC subject to Section 60 C.P.C.

2. The first contention raised by learned counsel for the petitioner is that no notice was issued to the petitioner before passing *ex parte* order before attaching the salary of the petitioner/Judgment debtor. But, no notice is contemplated to be issued to the Judgment Debtor either under Order XXI CPC or any other provisions of CPC before ordering attachment under Order XXI Rule 48 CPC. At best, notice under Order XXI Rule 22 CPC is required, only in case the Execution Petition is filed after two years from the date of decree. But, in the present case, the decree was passed on 26.08.2016 and the Execution Petition was filed in the year 2017 i.e., within two years from the date of decree, thereby no notice under Order XXI Rule 22 CPC need be issued. Hence, the contention of learned counsel for the petitioner that without issuing any notice *ex parte* order was passed is without any substance and on that ground alone, the impugned order cannot be set aside.

3. The other contention of learned counsel for the petitioner is that the petitioner filed a petition under Order IX Rule 13 CPC to

set aside the *ex parte* decree along with delay condone petition and it is still pending. At best, the remedy open to the petitioner is to file a petition under Order XXI Rule 26 CPC. But, in the present petition, the petitioner cannot claim any relief. Therefore, it is left open to the petitioner to file appropriate application before the Executing Court or before the Original Court.

4. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

NOVEMBER 24, 2017
YVL



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CIVIL REVISION PETITION No.6465 of 2017

Date: 24.11.2017

YVL