THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.465 OF 2018

ORDER:

This revision petition is filed under Section 115 C.P.C. challenging the order dated 15.12.2017 in E.P.No.143 of 2016 in O.S.No.2292 of 2006 passed by the IV Senior Civil Judge, City Civil Court, Hyderabad ordering attachment of E.P. schedule property i.e. house belonging to the petitioner/JDr No.4 for realization of the balance decreetal debt due to the Decree Holder.

M/s Margadarsi Chit Fund Private Limited, Decree Holder filed petition under Order 21 Rule 54 C.P.C to sell the property by issuing proclamation under Order 21 Rule 66 C.P.C.

The main contention before the executing Court is that there was settlement of dispute before the Lok Adalat and Lok Adalat passed an Award dated 08.07.2017, there was an undertaking given by the Judgment Debtor No.1, in his counter at para 2 that the Decree Holder is entitled to proceed against the property of Judgment Debtor No.1 while absolving other Judgment Debtors from their liability. Judgment Debtor No.1 paid substantial amount under the decree and two receipts issued by the Decree Holder were placed on record evidencing payment of part of decretal amount. Basing on those documents, the petitioner/JDr No.4 contended that the Decree Holder can proceed only against principal debtor i.e. Judgment Debtor No.1, but not against the sureties as they were absolved from their liability, due to payment of substantial amount by two receipts and thereby the order passed by the executing Court ordering attachment under Order 21 Rule 54 C.P.C. is illegal and prayed to set aside the same.

Undisputedly, the petitioner is co-surety and Judgment Debtor No.1 is principal debtor. The Decree Holder is governed by Chapter VIII of Indian Contract Act from Sections 124 to 147. According to Section128 of Indian Contract Act, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. Here, in the present case, the decree was obtained making the principal debtor and sureties jointly and severally liable to pay the debt due and in such a case, the Decree Holder can proceed against any one of the Judgment Debtors including the sureties for realisation of the decree debt. The Decree Holder filed execution petition before the Court and in terms of the settlement before the Lok Adalat, the Judgment Debtor No.1 has to pay the decretal amount of Rs.,2.60,000/- in 12 instalments with a default clause that in the event of failure to pay two consecutive instalments by Judgment Debtor No.1 i.e. principal debtor, the Decree Holder can proceed to recover entire E.P. amount as per law. The second clause enables the Decree Holder to recover the amount at a time in view of the alleged default committed in payment of two consecutive instalments. Therefore, the Decree Holder is entitled to proceed in accordance with law for realisation of the decree debt proceeding either against the principal debtor or against any one of the co-sureties.

As per Section 145 of the Indian Contract Act, the principal debtor is under obligation to indemnify the surety, and the surety is entitled to recover the amount from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully. Thus, the petitioner herein being the surety is entitled to recover the amount, if any, he paid to the Decree Holder. There is an implied promise by the principal debtor to indemnify the surety. Therefore, in the absence of any contract to contrary, both the principal debtor and sureties whose liability is joint and several in terms of the decree, the

Decree Holder is entitled to proceed against any one of the Judgment Debtors to realise the decree debt.

The main contention before this Court is that since the principal debtor admitted his liability to pay the debt while agreeing to proceed against his property for realisation of the decree debt, absolving the sureties from their liability, in para 2 of the counter, the property of the petitioner/JDr No.4 cannot be attached. But this contention is without any merit since the first Judgment Debtor cannot absolve or exonerate the sureties from their liability on mere payment of part of the decretal amount as the sureties are jointly and severally liable along with the principal debtor to pay the decreetal amount.

Though the principal debtor agreed to proceed against his property for realisation of the debt, it is the choice of the decree holder to proceed against any one of the sureties or their property to realise the debt. Therefore, the alleged admission made in the counter filed by the principal debtor is not binding on the Decree Holder and it would not create any bar against the Decree Holder from proceeding against the sureties. Hence, on this ground the petitioner cannot be exonerated from his liability to pay the decree debt.

The other ground urged before this Court is that the petitioner and other Judgment Debtors paid substantial amount to discharge decree debt. In case any one of the sureties paid any amount in excess of their share lawfully, they are entitled to claim contribution against other co-sureties, in the absence of any contract to the contrary in view of Section 146 of the Indian Contract Act.

Hence, the petitioner is not entitled to claim any relief in the present petition to raise attachment over the property belonging to him under Order 21 Rule 54 C.P.C. As such, the impugned order passed by the Court below is free from any illegality warranting no interference of this

Court exercising power under Section 115 C.P.C. as the jurisdiction of this Court under Section 115 C.P.C. is limited and such jurisdiction can be exercised by this Court only when the Court below passed any order appears to have exercised not vesting on it by law or failed to exercise jurisdiction vested or to have acted on its jurisdiction illegally or with material irregularity. In the absence of any such illegality or irregularity in exercise of jurisdiction by the Court below or failure to exercise the jurisdiction that vested on it or exercise by excessive jurisdiction that conferred on it. In the absence of establishing any of these three grounds, this Court cannot interfere with the order passed by the Court below in execution petition. Therefore, I find no merit in the petition and it is devoid of merits and the revision petition is liable to be dismissed at the stage of admission.

Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY,J

30.01.2018
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