

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
CIVIL REVISION PETITION No.5254 of 2011

ORDER:

This petition under Section 115 C.P.C. questioning the docket order dated 26-11-2002 passed by the Junior Civil Judge, Palakol, in EP.No.127 of 2002 in S.O.S.No.486 of 2001 making the attachment absolute and closed the EP.

The main contention before this Court is that immovable property was attached under Order 38 Rule-5 CPC before judgment and that noticed that the order is not in compliance of Section 60 of C.P.C. The other ground is that property was attached under order 38 Rule-5, but that would not be come in the way of decree-holder to recover the amount by proceedings in a different mode of execution under Order 21 Rules 37 and 38 of C.P.C.

During hearing, the counsel for the petitioner reiterated two grounds stated supra.

The EP was filed with a specific relief of attachment of salary of the judgment-debtor to the extent of 1/3rd of salary after deducting Rs.400/- out of net amount of Rs.8,000/- and accordingly, the Executing Court ordered notice under Order 21 Rule-48 CPC and ordered attachment of salary on 30-06-2002. Thereafter, the petitioner did not appear and attachment effected is already made absolute. The order is silent as to the exemptions in Section 60 C.P.C but relief claimed in the EP was not inconsonance with Section 60 C.P.C. Therefore, order is modified that the attachment made absolute by order dated 26-11-2002 is subject to Section 60 of C.P.C.

With the above modification, the revision petition is disposed of. In consequence, Miscellaneous Petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

12-03-2018
Nvl

