**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**C.R.P.No.2517 of 2017**

**Date: 09.04.2018**

Between:

Jeedigunta Sriramulu S/o.Sriramulu,
Aged about 46 years, Occ: Employee,
R/o.D.No.5-18, Near Sivalayam,
Veluvemu Undrajavaram, Tanuku mandal,
West Godavari district, A.P.
Presently at Line Man Katakateswara and Surplalers,
APEPDCL, Nidadavolu,
West Godavari district, A.P. … Petitioner

And

M/s.Shriram City Union Finance Limited,
Branch at Rajahmundry-1,
Rep. by its Senior Manager & GPA Holder,
G.Venkateswarlu S/o.Sanyasi Rao,
Aged about 36 years, Rajahmundry division
and Zone, D.No.6-12-5/1, Kotipalli Bus Stand,
Innespeta, Rajahmundry,
East Godavari district (DHR)& 5 others … Respondents

Counsel for the Petitioner : Mr.K.Joseph

Counsel for the Respondents: Mr.Maheswara Rao Kuncheam
for respondent No.1

**The Court made the following:**

**Order**: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This civil revision petition arises out of order dated 06.01.2017 in E.P.No.686 of 2016 in A.S.No.330 of 2013, on the file of the Principal District Judge, Rajahmundry, East Godavari district.

2. We have heard Mr.K.Joseph, learned counsel for the petitioner and Mr.Maheswara Rao Kuncheam, learned counsel for respondent No.1.

3. Respondent No.2 is the principal borrower from respondent No.1. The petitioner stood as a surety along with judgment debtors No.2, 4 and 5. As the principal borrower failed to repay the loan amount, respondent No.1 has referred the dispute for arbitration as per the agreement and an arbitral award was passed on 30.06.2015, directing the judgment debtors to pay a sum of Rs.16,70,112/- along with interest @ 18% p.a. on the claim amount. The petitioner and judgment debtors No.2 and 4 are government employees. As none of the judgment debtors have paid the debt, respondent No.1 has filed E.P.No.686 of 2016, for execution of the arbitral award. The petitioner has filed a counter affidavit in the E.P., wherein he has *inter alia* admitted that he has stood as a guarantor for payment of loan to the principal borrower and that the principal borrower "pledged movable property" as security and that, instead of recovering the loan amount by selling the secured property, respondent No.1 has been

proceeding against the sureties. The lower court has allowed the E.P., by holding that under law, the decree holder has a right to proceed against any of the judgment debtors and allowed the E.P. *qua* the petitioner, while dismissing the E.P. against judgment debtor No.2, on the ground that he has already suffered an attachment award in another case i.e. E.P.No.33 of 2016 on the file of the Junior Civil Judge, Nidadavolu.

4. At the hearing, the only submission advanced by Mr.K.Joseph, learned counsel for the petitioner, is that the principal borrower has not only pledged his vehicle, but also mortgaged immovable property and that without recovering the loan amount by sale of the vehicle and the mortgaged property, the respondent No.1 – decree holder, is not justified in proceeding against the petitioner, who is only a surety.

5. The learned counsel for the respondent no.1 – decree holder, submitted that the whereabouts of the principal borrower are not known and that the decree holder is unable to trace the vehicle. He denied the submission of the learned counsel for the petitioner that the principal borrower has mortgaged any immovable property.

6. Except asserting that the vehicle of the principal borrower is available for sale, the learned counsel for the petitioner has not produced any material to show that the vehicle is physically available. As regards immovable property, he did not produce any evidence in

support of his plea that the same was mortgaged by the principal borrower.

7. Under Section 128 of the Indian Contract Act, 1872, the liability of a surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

8. The law is well settled that where the decree is passed for joint and several liability, the decree holder is entitled to proceed against any, or all of the judgment debtors. The petitioner cannot, therefore, cry foul at the action of respondent No.1, in not proceeding against the principal borrower.

9. For the aforementioned reasons, we do not find any merit in the civil revision petition and the same is, accordingly, dismissed.

10. As a sequel, miscellaneous applications if any, stand dismissed.

**(C.V.Nagarjuna Reddy, J)**

**(D.V.S.S.Somayajulu, J)**

Date: 9th April, 2018

msb