HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.5235 OF 2012

ORDER:

Heard Ms.T.V.Sridevi for revision petitioner. In spite of service of notice, none appears for respondents.

The judgment debtor in E.P.No.94 of 2010 is the revision petitioner. The 1st respondent filed E.P.No.94 of 2010 under Order XXI Rule 46 CPC to attach leave salary, bonus and compensation amount received by or recoverable from the judgment debtor. Through the order under revision, the Executing Court partly allowed E.P.No.94 of 2010.

The principal objection of the judgment debtor is that the attachment of pension etc., is not available in view of proviso 'h' to Section 60(1) of CPC. The amounts received by the judgment debtor are benefits paid under voluntary retirement scheme implemented by FACOR/employer of judgment debtor.

I have perused the order under revision.

Ms.T.V.Sridevi contends that the judgment debtor is entitled for protection from attachment under Section 60(1) proviso. The voluntary retirement scheme benefits are paid in lieu of wages of discontinuation or severance of relationship between the employer and employee. Therefore, the premature severance if results in receiving a few benefits they have to be accordingly understood and applied while giving the benefit available under proviso to Section 60(1) of CPC. Her further grievance is that the decisions relied on by the judgment debtor ought to have been considered and the issue of fact and law decided. She places reliance on

RADHEY SHYAM GUPTA Vs. PUNJAB NATIONAL BANK AND ANOTHER[1] in support of her contention that the receipt of retirement benefits such as pension, gratuity etc., even if received by an employee, do not lose their character and are covered by the applicable proviso under Section 60 (1) of CPC.

The decree holder has not entered appearance notwithstanding receipt of notice. The Court is not persuaded to completely accept the case of petitioner both on the nature of benefit received by petitioner and grant the benefit of proviso under Section 60 (1) of CPC. The nature of each amount received will have to be first determined. Then the Executing Court can either extend the benefit of proviso or decline to extend the benefit.

To meet the ends of justice, this Court is of the view that the order under revision can be set aside and the matter remitted to Executing Court for consideration and disposal in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. The revision petitioner is directed not to withdraw the amount for a period of eight weeks. The present arrangement is subject to further orders the Executing Court would be passing in this behalf.

The Civil Revision Petition is ordered, as indicated above. No order as to costs.

Pending miscellaneous petitions, if any, stands closed.

S.V.BHATT, J

Date: 26-11-2018
<u>Note:</u>
Issue C.C. in three days
(B/o)
Prv

[1] (2009) 1 Supreme Court Cases 376