

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2276 of 2018

ORDER:

Heard Sri Rama Krishna, learned counsel for Sri V. Hari Haran, learned counsel for the revision petitioner – defendant No.1.

The present Civil Revision petition, under Article 227 of the Constitution of India, is filed questioning the order, dated 30.06.2017, in I.A.No.558 of 2017 in O.S.No.51 of 2017 on the file of the I-Additional Chief Judge, City Civil Court at Secunderabad, whereby and whereunder, the petition filed by the plaintiff to direct respondent Nos.2 and 3 – defendant Nos.2 and 3 to withhold the retiral benefits of respondent No.1 – defendant No.1 by way of attachment till further orders, was allowed directing respondent Nos.2 and 3 – defendant Nos.2 and 3 to withhold the amounts which are not exempted from attachment under the Code.

Learned counsel for the revision petitioner – defendant No.1 has drawn the attention of this Court to the discussion made by the Court below on point No.2, which is relevant for the present purpose and which reads thus:

“(i) Now coming to the second aspect of whether the retirement benefits of respondent No.1 – defendant No.1 be attached by this Court, Section 60 of CPC speaks about the properties which are liable for attachment. Simultaneously, the said section exempts certain properties from attachment. Therefore, this Court feels that the benefits which are not exempted under the purview of Section 60 CPC can be attached by this Court in order to meet the ends of justice.

(ii) Therefore, the respondents No.2 & 3 – defendants No.2 & 3 are directed to withhold the amounts which are not exempted from attachment.”

Learned counsel would submit that, virtually, the Court below did not look into and examine the question whether the present request attracts any of the provisions of Section 60 of CPC.

Learned counsel would also submit that even on 05.07.2017 in I.A.No.559 of 2017 in the very same suit, respondent No.1 herein, who is the plaintiff, succeeded in getting the order of attachment before judgment under Order XXXVIII Rule 5 read with Section 151 of CPC against the revision petitioner. He has drawn the attention to the order, dated 05.07.2017, which shows that the petition was allowed attaching the petition schedule property. Learned counsel would also submit that the value of the petition schedule property is to the tune of Rs.1.50 crores.

Certainly, the value of the petition schedule property ought to be examined by the Court below before passing the order under challenge. Therefore, the present matter requires to be remanded so as to enable the Court below to examine the aspects referred to in the above, by giving opportunity to both sides to re-agitate the issue, and pass appropriate orders taking into consideration the decisional law in relation to the exemptions provided under Section 60 of CPC as well as Order XXXVIII Rule 5 of CPC.

Accordingly, the Civil Revision Petition is allowed setting aside the order under challenge and remitting the matter to the I-Additional Chief Judge, City Civil Court at Secunderabad, for disposal of I.A.No.558 of 2017 in O.S.No.51 of 2017 afresh, as indicated above, within one month from the date of receipt of a copy of the order.

Miscellaneous Petitions, if any, pending in the present petition, stand closed.

10.04.2018

Note: Issue CC by 16.04.2018

B/o

v v

A. SHANKAR NARAYANA, J

