THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.5874 of 2016

ORDER

This civil revision petition under Section 115 of C.P.C., is filed to set aside the order dated 15.07.2016 passed in E.P.No.7 of 2016 in ACP No.56 of 2014 on the file of the Principal Senior Civil Judge, Rajahmundry, ordering attachment of salary of J.Dr.Nos.2 to 4 and 6 and 7 by exercising power under Order 21 Rule 48 of C.P.C.

2. The petitioner is J.Dr.No.2 in ACP No.56 of 2014. In the said dispute, the Deputy Registrar of the Chits/Arbitrator, Kakinada, vide order dated 05.10.2015, held that the opponents 1 to 7 therein are jointly and severally liable to pay a sum of Rs.5,18,607/- with interest at the rate of 18% per annum on the principal amount of Rs.4,04,457/- from the date of filing of the dispute till the date realisation, to the disputant i.e., first respondent herein. To realise the said amount, the first respondent filed E.P.No.7 of 2016 to attach the salary of J.Dr.Nos.2 to 4 and 6 and 7 under Order 21 Rule 48 of C.P.C. According to Section 60 CPC., till the date of attachment, the amount is being deducted from the salary of J.Dr.Nos.2 to 4 and 6 and 7 by the Drawing and Disbursing Officer, sending the amount to the Court below. The present petition is filed by J.Dr.No.2 alone questioning the order on the ground that the very registration of execution petition by proceeding against the sureties is illegal as the principal debtor is available for realisation of the amount due and therefore, he sought to set aside the order passed by the Court below.

3. During hearing, learned counsel for petitioner contended that all the other J.Drs., including the Principal Debtor., are working in the same department, drawing salary and without proceeding against the principal debtor, the first respondent cannot proceed against the surety and on this ground alone, the attachment is liable to be rejected and requested to pass appropriate order. He placed reliance on the judgment of this Court in C.R.P.No.149 of 2011 dated 19.07.2013 (Sri Jaichand T. Gangwal v. M/s.Sriram Chits Private Limited and others). He further contended that the petitioner alone is not liable to pay the debt due to the first respondent.

4. Whereas the counsel for the first respondent has supported the order impugned.

5. The dispute was raised by the first respondent before the Deputy Registrar of Chits under the provisions of A.P.Chit Funds Act in ACP No.56 of 2014, wherein an award was passed on 05.10.2015 making all the J.Drs., liable jointly and severally. Since the said order was not challenged before any other competent authority or Court, it attains finality. Therefore, the first respondent filed E.P.No.7 of 2016 under Order 21 Rule 48 of C.P.C., to realise the decree debt by attaching the salary of J.Dr.Nos.2 to 4 and 6 and 7.

6. No doubt, as per the order passed in ACP No.56 of 2014, all the J.DRs., are jointly and severally liable to pay the debt due, and in terms of Section 128 of Indian Contract Act, 1872 (for short 'the Act'), they are jointly and severally liable unless there is a contract to

the contrary. Therefore, each and every surety is liable for payment of the debt due to the creditor.

7. If, for any reason, the petitioner being J.Dr.No.2 paid any amount in excess of his share, he is entitled to claim contribution under Section 140 of the Act. According to Section 140 of the Act, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. Thus, it seems, the surety, who paid the debt in excess of his share will step into the shoes of decree holder and can recover the amount proceeding in any manner provided under the Act against the principal debtor or other sureties whose liability is coextensive with that of the principal debtor and he is also liable for payment of debt along with other sureties and principal debtor. Therefore, the petitioner is not entitled to claim any exemption from payment of the amount. On the ground that the petitioner alone is not liable to pay the debt in ACP No.56 of 2014 passed by the Deputy Registrar of Chits, the petition cannot be allowed setting aside the order passed by the executing Court in E.P.No.7 of 2016. Moreover, the order passed by the Principal Senior Civil Judge, Rajahmundry, in E.P.No.7 of 2016, is silent with regard to the period for deduction of the amount from the salary of the J.Dr., except issuing attachment warrant and notice under Rule 48 of CPC to the J.Drs. According to Section 60(1)(i) of CPC, salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of the decree

other than a decree for maintenance. Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempted from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempted from attachment in execution of that decree.

8. Thus, it means, the attachment shall continue only for twenty four months subject to the other conditions laid down under Section 60(1)(i) of CPC. The attachment was ordered in the month of November, 2010 and it shall be continued only for a period of 24 months from the date of such attachment. Therefore, the order of attachment of salary while exercising power under Order 21 Rule 48 C.P.C., is allowed to the extent indicated in Clause (1)(i) of Section 60 of CPC.

9. With the above modification, the Civil Revision Petition is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

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M. SATYANARAYANA MURTHY, J

22nd October, 2018

sj