

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P. No.3214 OF 2018

ORDER:

This civil revision petition is filed under Section 115 of the Code of Civil Procedure (for short 'CPC') to revise the order dated 02.01.2008 passed in E.P.No.61 of 2016 in O.S.No.26 of 2008 by the Principal Senior Civil Judge, Kadapa.

The petitioner is the Judgment Debtor and the respondent is the Decree Holder.

The respondent filed petition for realization of decree debt from judgment dated 01.03.2011 from the salary of the petitioner as he is working as Manager and drawing salary of Rs.60,300/- per month and that the petitioner is having sufficient means to discharge the decree debt. The petitioner herein filed counter denying material allegations *inter alia* contending that he filed petition to condone the delay under Order IX Rule 13 C.P.C. and that he also pleaded that he filed written statement raising plea of forgery and also filed petition under Order XXVI Rule 10 –A CPC to refer the disputed signatures on the documents to the expert along with his admitted signatures. The above said petitions are pending for consideration. The petitioner further contended that one Karnati Lakshmikar Reddy lent an amount of Rs.45,000/- and Rs.20,000/- on 01.12.2004 to N.Venkatanarayana Reddy and K.Lakshminarayana and they executed promissory notes and that the petitioner acted as attestor in those promissory notes and that he never borrowed any amount and repayment of said amount does not arise and the suit was filed for unlawful gain by the respondent and prayed to dismiss the execution petition. The executing Court upon consideration of the contentions raised by learned counsel for

the respondent ordered attachment of salary under Order XXI Rule 48 subject to Section 60 of C.P.C.

The present petition is filed on the ground that no notice was served and the petition filed to condone the delay is pending and that ordering attachment at this stage is an illegality. Therefore, requested the Court to set aside the order passed by the Court below.

It is an undisputed fact that the respondent obtained decree and filed execution petition for recovery of decree debt by attachment of salary and exercising power under Order XXI Rule 48 C.P.C., the Court below ordered execution petition. The suit documents are forged, petition to condone the delay and to set aside the ex parte decree are pending and that the plea of the petitioner that he never executed any promissory note are outside the purview of E.P and on those grounds, the order of the Court below cannot be set aside, except to grant stay under Order XXI Rule 26 C.P.C, but no stay petition was filed before the executing Court. When the petitioner is working as employee and drawing salary of Rs.60,300/- per month is bound to discharge the decree debt. The petitioner having sufficient means avoided to pay the decree debt, hence, the Court below ordered attachment of salary for realization of the decree debt subject to Section 60 C.P.C. In view of the limited scope of jurisdiction under Section 115 C.P.C. this Court can be exercised only under these three circumstances enumerated as under:

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit”.

But none of the grounds contained in Section 115 C.P.C. are urged, not substantiated.

In the present case, I find no such ground warranting interference of this Court with the order under challenge and consequently, the civil revision petition is liable to be dismissed.

Accordingly, the civil revision petition is dismissed. No costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

17.08.2018
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M.SATYANARAYANA MURTHY,J