

SMT. JUSTICE T. RAJANI

CIVIL REVISION PETITION No.3530 OF 2018

ORDER:

The present Civil Revision Petition is preferred, under Article 227 of the Constitution of India, against the order, dated 13.06.2018, passed in I.A. No.356 of 2018 in O.S. No.26 of 2018, by the learned II Additional District and Sessions Judge (Fast Track Court), Mancherla, by virtue of which, the Court directed respondent Nos.2 to 4 therein to stop the retirement benefits of respondent No.1.

2. Respondent No.1 herein is the plaintiff in the aforesaid suit while revision petitioner is the defendant and respondent Nos.2 to 4 are his employers.

3. Revision Petitioner and respondent No.1 are husband and wife. Wife filed suit in O.S. No.26 of 2018 for grant of maintenance etc., and also filed I.A. No.356 of 2018 along with the suit seeking attachment of retirement benefits of her husband. The trial Court, by order, dated 13.06.2018, while issuing notice to the employers of revision petitioner ordered attachment of his retirement benefits. Aggrieved of the same, husband preferred the present Civil Revision Petition.

4. Heard Sri G. Allabakash, learned counsel for the revision petitioner and Sri M. Satish Kumar, learned counsel for respondent No.1.

5. The learned counsel for the revision petitioner would submit that impugned order is not in accordance with the provisions of Order XXXVIII, Rule 5 of the Code of Civil Procedure, 1908 (for short 'Code'), which mandates issuance of notice to the defendant calling upon him to furnish a security for the sum that is sought to be attached, and without following the said pre-condition, the trial Court directly ordered attachment of the sum and there is no notice issued to the defendant therein calling upon to furnish security. He also placed reliance on a decision rendered by a learned Single Judge of Madras High Court in **Sathiyabama v. M. Palanisamy**¹, wherein it is held that retirement benefits are exempted from attachment. But, the question before me is whether order of attachment can be made without calling upon defendant to furnish security.

6. Order XXXVIII, Rule 5 of the Code mandates a notice to the defendant before making any attachment. The impugned order does not reflect that the said mandate was complied with. However, the learned counsel for respondent No.1 would submit that attachment sought for is in respect of arrears of maintenance amount, and if the retirement benefits of the petitioner are allowed to be withdrawn, there would be no recourse to the wife for realizing the maintenance amount.

7. Hence, in order to meet the ends of justice, this Court opines that it would be appropriate to set aside the impugned order with a direction to the trial Court that it shall follow Order XXXVIII, Rule 5 of

¹. 2004 (1) Mad.L.J. 43

the Code and issue fresh notice to the defendant. Till such time, the retirement benefits of the petitioner - defendant shall not be disbursed by respondent Nos.2 to 6 herein - employers. Needless to say that the trial Court is at liberty to exercise its discretion with regard to conditional attachment of retirement benefits as specified under Order XXXVIII, Rule 5 (3) of the Code.

8. With the above observation, the present Civil Revision Petition is allowed. No order as to costs.

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

October 05, 2018
Mgr

SMT. T. RAJANI, J

