

**HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

**CRP No.5128 of 2015**

**ORDER:**

This Civil Revision Petition is filed questioning the order dated 14.10.2015 in EP No.57 of 2011 in OS No.42 of 2007 passed by the V Senior Civil Judge, City Civil Court, Hyderabad.

E.P.No.57 of 2011 is filed by a Chit Fund Private Limited against the five judgment debtors. After the application was filed, the lower Court issued a proclamation for the sale of immovable property of the third judgment debtor to realize the decretal amount. Questioning the same, the CRP is filed by the third judgment debtor.

This Court has heard Sri Bandi Sai Vamshi, learned counsel for the revision petitioner/judgment debtor and Sri P. Durga Prasad, learned counsel for the first respondent/deGREE holder.

The contention of the learned counsel for the revision petitioner is that the third judgment debtor is one of the guarantors of the loan taken by the first judgment debtor. He states that out of the money that is borrowed by the judgment debtor, he has discharged his share of the money viz., Rs.1,69,690/- on 12.04.2008

and that therefore the decree holder should have withdrawn the case against him. According to the learned counsel, Section 146 of the Contract Act applies and that the petitioner is absolved as his liability to pay any further amount. The learned counsel relied upon ***M. Venkataramanaiah v. Margadarsi Chit Fund Limited, Kadapa***<sup>1</sup> to argue that the third judgment debtor/ revision petitioner is discharged from his liability.

In reply thereto, the learned counsel for the first respondent submits that there is a joint and several decree to pay the liability. According to the learned counsel, the decree dated 18.01.2010 clearly states that defendants 1 to 5 are jointly and severally liable to pay the decree sum with interest and costs. The learned counsel submits that the executing Court cannot go beyond the decree. He also relied upon ***M. Rama Rao v. Sriram City Union Finance Ltd.***<sup>2</sup> and ***Chalapathi Chit Fund Private Ltd., Guntur v. Adusumalli Malleswara Rao*** (in CRP No.2980 of 2009), which are judgments of Division Benches of this Court to argue that as the liability is joint and several, the decree holder can proceed against any one of the judgment debtors. It is his submission that the order passed by the lower Court

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<sup>1</sup> 2009 (4) ALD 300

<sup>2</sup> 2014 (6) ALT 69 (DB)

does not suffer from any infirmities and that the lower Court merely ordered proclamation of sale. There is no final order according to the learned counsel. Therefore, he argues that the revision itself is not maintainable.

This Court after hearing both the learned counsel notices that the revision petitioner is a guarantor and there is a decree that is passed that it is joint and several. There is force in the submission of the learned counsel for the first respondent that the executing Court cannot go beyond the decree.

In addition, this Court notices that the argument advanced on the basis of **M. Venkataramanaiah's** case (1 supra) is not really correct. In that case, a learned single Judge was dealing an issue where it was felt that there can be discharge of a surety holder in case the creditor has an agreement with the principal debtor. The record in that case discloses that the respondent received certain instalments from the second respondent. In addition, the detention of the petitioner was held to be contrary to Order XXI CPC. In that context, the Court held that the CRP is to be allowed.

The first respondent, however, relied upon two Division Bench judgments reported in **M. Rama Rao's**

case (2 supra) and in ***Chalapathi Chit Fund Private Ltd., Guntur*** (in CRP No.2980 of 2009).

In these cases, after a review of the entire law, their Lordships held that where judgment debtors suffered a joint and several decree, the decree holder is at liberty to recover the money against any one of the judgment debtors. The Division Bench clearly held that the decree holder has the liberty to file an execution against one or the other judgment debtors. The Courts held that once there is a joint and several decree, the decree holder has the opportunity to proceed against the principal borrower or the sureties. In the case on hand, the evidence is not clear to show under what circumstances, the alleged payment was made. The decree holder's debt has still not discharged fully.

Therefore, this Court holds that the decree holder has the liberty under law to proceed against any one of the judgment debtors. If one judgment debtor is the owner of immovable property, nothing prevents the decree holder from recovering the amount due from the sale of the said property.

This Court feels that in the impugned order there is no error committed by the lower Court. Accordingly, the Civil Revision Petition is dismissed. The impugned order

dated 14.10.2015 in EP No.57 of 2011 in OS No.42 of 2007 passed by the V Senior Civil Judge, City Civil Court, Hyderabad is confirmed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous Petitions, if any pending in this revision shall stand closed.

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**D.V.S.S. SOMAYAJULU, J**

Date: 18.12.2018  
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