

HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

C.R.P.No. 4436 of 2018

ORDER:-

This Civil Revision Petition is filed challenging the order dated 22.06.2018 in E.P.No. 51 of 2017 in D.R.K.No. 261 of 2015 passed by the Principal Senior Civil Judge, Kadapa, whereby the salary of the petitioner - 4th J.Dr. was ordered to be attached.

Heard the learned counsel for the petitioner and perused the material placed on record.

The learned counsel for the petitioner submits that the petitioner is the judgment debtor. He was working as Junior Assistant in Z.P. High School, and he was placed under suspension. He was not getting salary of Rs.31,000/- during his suspension period. The attachment ordered by the trial Court ordering attachment of salary is not in accordance with law.

A perusal of the order passed by the trial Court reveals that the salary of the petitioner was attached as per Section 60 CPC. The parties have not adduced any evidence in E.P.No. 51 of 2017 and sought for attachment of salary. The trial Court has ordered attachment of salary of the judgment debtors subject to the provision under Section 60 CPC.

The petitioner is the judgment debtor in E.P.No. 51 of 2017. He challenged the order passed by the executing court ordering attachment of his salary. His contention is that he was under suspension by the date of attachment. The executing Court attached his salary of Rs.31,000/-, which he was not getting due to his suspension orders. His further contention is that the trial Court has to recovery the E.P. amount from J.Drs.1 and 2 who are capable of satisfying the decree, and therefore, sought for ordering attachment against J.Drs.1 and 2 and later to proceed against the petitioner herein.

A perusal of the order of the trial Court reveals that the attachment was ordered against the salary of the petitioner subject to the provision of Section 60 CPC.

In this regard, a perusal of Section 60(1)(i) CPC reveals the salary to the extent of [the first (one-third rupees and two-thirds of the reminders)] in execution of any decree other than a decree for maintenance.;

“60.Property liable to attachment and sale in execution of decree.

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

(i) salary to the extent of [the first [one thousand rupees] and two third of the remainder] [in execution of any 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 exempt 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 exempt from attachment in execution of that decree.]”

In the light of Section 60(1)(i) C.P.C., the executing Court has to pass an order of attachment. But, since no evidence was adduced by the parties, the executing Court passed the order of attachment subject to the provision under Section 60 CPC.

Since the parties did not adduce any evidence and the executing Court also passed a vague order just to follow Section 60 CPC for attachment of salary of J.Dr. leaving it to the Baillie's discretion to attach portion of salary, the order passed by the executing Court is not specific in the light of the provision under Section 60(1)(i) CPC.

Therefore, the petitioner may file a separate petition before the trial Court for passing specific order for attachment of portion of salary. The petitioner may adduce his evidence in that regard and the executing Court shall pass an order in accordance with the provision under Order 21 Rule 48 read with Section 60 (1)(i) CPC.

With these observations, this Civil Revision Petition is disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

GUDISEVA SHYAM PRASAD, J

29.11.2018

bcj

