

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CIVIL REVISION PETITION No.2948 OF 2011**

**ORDER:**

The present revision petition, under Section 115 of the Code of Civil Procedure, 1908, is filed seeking to revise the order, dated 28.06.2011, passed in E.P.No.80 of 2010 in O.S.No.1098 of 1997 on the file of learned V Senior Civil Judge, City Civil Court, Hyderabad.

2. Heard Sri Prabhala Rajasekhar, learned counsel for the revision petitioner – judgment debtor No.4, and Sri G. Dhananjai, learned counsel for respondent No.1 – decree holder.

3. In the grounds of revision, three main points have been insisted upon. First is, respondent No.1's company was wound up and it is under the control of official liquidator and, therefore, the present Execution Petition filed by respondent No.1 – decree holder is not maintainable. The second ground urged is that E.P.No.48 of 2004 was closed on the ground that a liquidator was appointed by respondent No.1's company and, therefore, the said order would operate as *res judicata* and, therefore, the present Execution Petition itself is liable to be dismissed. Third ground urged is, even E.P.No.77 of 2009 filed against the principal borrower itself was dismissed and, therefore, respondent No.1 is not entitled to proceed against other judgment debtors, as the liability of guarantor is co-extensive with that of the principal borrower.

4. Learned counsel for the revision petitioner would insist that once winding up order has been passed or a provisional liquidator has been appointed, Section 279 of the Companies Act, 2013, prohibits commencement of suit or other legal proceedings, or if pending at the date of the winding up order, prohibits proceeding with the suit or other legal proceedings, by or against company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose and, since, in the earlier Execution Petition, the Executing Court closed E.P.No.48 of 2004 on the ground that the liquidator was appointed to respondent No.1's company, the same would bar respondent No.1 - decree holder to proceed with the present E.P. and, therefore, the order of attachment of salary passed by the Executing Court is unsustainable. Learned counsel also draws the attention of this Court to Section 55 of the Chit Fund Act, 1982, contending that the provisions of Section 55 of the Chit Funds Act are analogues to the provisions of Section 279 of the Companies Act, 2013 and, therefore, seeks to set aside the order passed by the Court below.

5. Per contra, learned counsel for respondent No.1 would submit that the principle of bar by *res judicata* does not apply to the present Execution Petition and the result of the Company Petition filed before this Court is not shown and, thus, supports the order impugned.

6. From the aforesaid submissions, it can be said that none of the parties are clear whether the proceedings in the Company Petition are still pending and whether the order of provisional appointment of

liquidator for respondent No.1 - decree holder's company is still subsisting or not.

7. The submission that the dismissal of earlier Execution Petitions would bar proceeding with the present Execution Petition on the ground of applicability of *res judicata* is not correct, for the reason E.P.No.48 of 2004 was closed, since, E.A.No.352 of 2004 was allowed on 20.08.2004 on the ground that liquidator was appointed. But, however, the execution proceedings were not terminated. Thus, so long as the execution proceedings are not terminated, certainly, it cannot be said that there has been final result in execution proceedings. Therefore, the application of principle of bar by *res judicata* is not available to the revision petitioner.

8. So far as the second ground is concerned, for want of proper material on record, it is difficult to answer the submission made by both sides.

9. Therefore, it is a case for remitting the matter to the Executing Court to consider the E.P. afresh by giving opportunity to both sides to place relevant documents, more particularly, the final result in the Company Petition and the order of provisional appointment of liquidator.

10. Accordingly, the revision petition is allowed and the order, dated 28.06.2011, passed in E.P.No.80 of 2010 in O.S.No.1098 of 1997 on the file of learned V Senior Civil Judge, City Civil Court,

Hyderabad, is set aside and the matter is remitted to the Executing Court to consider the E.P. afresh by giving opportunity to both sides to place relevant documents, more particularly, the final outcome of the Company Petition and the order of provisional appointment of liquidator. Both the parties are at liberty to file the relevant documents.

Miscellaneous Petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

June 26, 2018.  
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**A. SHANKAR NARAYANA, J**

