

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1096 OF 2011

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed questioning the docket order dated 19.01.2011 ordering attachment and notice in E.P. No.1 of 2011 in O.S. No.62 of 2010 on the file of Principal Junior Civil Judge, at Kothagudem.

The first respondent/ decree holder filed Execution petition for realization of decretal amount in O.S. No.62 of 2010 against the revision petitioner/ second defendant, wherein the Court ordered attachment of salary of the revision petitioner/ second defendant under Rule 48 of Order XXI of the Code of Civil Procedure, 1908 (for short 'CPC') and remit an amount of Rs.45,116/- in the Court.

Aggrieved by the order, the present revision is filed on the ground that the order is not in consonance with the law and that unless the first respondent/ decree holder proceeds against the principal debtor, the claim against the second defendant/ revision petitioner being the surety is not tenable and therefore the order passed by the court below is erroneous and prayed to set aside the same.

During hearing, learned counsel for the revision petitioner reiterated the same.

Admittedly, the decree was passed against all the defendants in the suit in O.S. No.62 of 2010 making them jointly and severally liable for the debt due by the principal debtor, since the liability of sureties is coextensive with that of the principal debtor according to Section 128 of the Indian Contract Act. Thus, the liability of each surety is inseparable and each of them are liable to pay the decretal amount

subject to recording part satisfaction of the amount if any paid by any other judgment debtor.

The other contention is liability of the Surety does not arise unless, the claim against the principal debtor exhausted he cannot proceed against the revision petitioner/ second defendant.

This objection is without any substance, since the decree passed by the trial court is against all the judgment debtors making them jointly and severally liable to pay debt due to the decree holder.

When an attachment is sought for under Rule 48 of Order XXI of CPC, the court has to follow the procedure contemplated under Section 60 of CPC and the order must disclose attachment of the amount and remittance of such amount subject to Section 60 of CPC. Therefore the order under challenge is modified and passed the following order:

**“Attach the salary of the judgment debtor No.2/
second defendant subject to Section 60 of CPC and
remit the amount in the court.”**

With the above modification, the civil revision petition is disposed of. There shall be no order as to costs.

Consequently, miscellaneous petition, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

28.02.2018
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