THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Civil Revision Petition No.6918 of 2018

ORDER: (Per the Hon'ble Sri Justice M.Satyanarayana Murthy)

This Civil Revision Petition, under Section 115 of C.P.C, is filed by the judgment debtors in the proceedings in E.P.No.69 of 2016 in A.R.C.No.133 of 2014 questioning the order dated 23.10.2018 passed by the Principal District Judge, West Godavari at Eluru whereby attachment of the property was ordered under Order XXI Rule 54 of C.P.C as a step to proceed further under Order XXI Rules 64 to 66 of C.P.C.

The petitioners are the judgment debtors in the Arbitration Case and the respondent obtained an award to recover an amount of Rs.3,65,51,068/- in total, together with costs. The respondent filed the Execution Petition by invoking Order XXI Rules 54 and 64 to 66 of C.P.C to attach the petition schedule property and for sale in order to realise the amount due under the award.

The petitioners herein, who are the judgment debtors before the Executing Court, filed a counter denying the material allegations *inter alia* contending that the 2nd petitioner herein-Smt. K.Mrunalini is also one of the sharers along with the 1st petitioner, as the property was acquired by her grand father and the property is an ancestral property of the joint family. But, this contention was rejected by the Executing Court on the ground that the petitioners did not produce any documentary proof that the property was acquired by the grand father of the 1st petitioner and ordered attachment under Order XXI Rule 54 of C.P.C.

Aggrieved by the said order, the present revision under Section 115 of C.P.C is filed reiterating the contentions urged before the Executing Court. While highlighting the non-consideration of the order passed by

the Vacation Civil Judge in I.A.No.185 of 2018 in O.S.No.52 of 2018 dated 28.05.2018, though filed along with a memo dated 06.06.2018, whereby an order of interim injunction was passed restraining respondents 1, 2 and 4 therein from alienating the property during the pendency of the suit, the petitioners sought to set aside the impugned order passed by the Executing Court.

During hearing, Sri K.R.Koteswara Rao, learned counsel for the petitioners, reiterated the contentions and more particularly demonstrated as to how the Executing Court did not consider the interim order passed in I.A.No.185 of 2018 in O.S.No.52 of 2018 dated 28.05.2018. While contending that, in case the property is sold in execution of the decree for realisation of the debt in the Arbitration Case, substantial injustice would be caused to the petitioners, the learned counsel requested to set aside the order passed by the Executing Court and release the property from attachment.

Undisputedly, the award was passed in A.R.C.No.133 of 2014 by the Arbitrator and to realise the decree debt, Execution Petition No.69 of 2016 was filed under Order XXI Rules 54 and 64 to 66 of C.P.C. The only contention raised by the petitioners before the Executing Court is that the 2nd petitioner-Smt. K.Mrunalini is also one of the sharers along with the 1st petitioner, as the property was acquired by her grand father and the property is an ancestral property of the joint family. This contention was not substantiated before the Executing Court by producing any piece of paper to establish that this property was acquired by the grand father of the 2nd petitioner and father of the 1st petitioner. Therefore, the Executing Court disbelieved the contention that the property was acquired by the grand father of the 2nd petitioner and ordered attachment. Even assuming for a moment that the order in I.A.No.185 of 2018 in O.S.No.52 of 2018 dated 28.05.2018 is brought to

the notice of the Court below by memo dated 06.06.2018, the said order only places a restraint against respondents 1, 2 and 4 therein from alienating the schedule property till 28.06.2018. But, thereafter, the interim order was not extended as per the material produced on record and, in fact, the attachment is not an alienation by respondents 1, 2 and 4 in O.S.No.52 of 2018 or by any of the parties and it is not even a voluntary transfer of the property. Therefore, the order in I.A.No.185 of 2018 in O.S.No.52 of 2018 will not come in the way of ordering attachment of the property under Order XXI Rule 54 of C.P.C. On this ground alone, the Civil Revision Petition is liable to be dismissed.

The jurisdiction of this Court under Section 115 of C.P.C is limited and this Court may exercise such jurisdiction where the Subordinate Court appears (i) to have exercised a jurisdiction not vested in it by law; or (ii) to have failed to exercise a jurisdiction so vested; or (iii) to have acted in the exercise of its jurisdiction illegally or with material irregularity. But, in this revision, none of these grounds were raised. Further, as per proviso to Section 115 C.P.C, the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. In this case, the present stage is an attachment was ordered under Order XXI Rule 54 of C.P.C which is a step towards sale of the property after filing sale papers, encumbrance certificate etc., this order of attachment will not terminate the proceedings finally. Therefore, such order cannot be treated as a final order in view of the law declared by a Constitutional Bench of the Supreme Court in **Mohan Lal Magan Lal Thacker v. State of Gujarat**[1], wherein the Apex Court laid down the following four

[1] AIR 1968 SC 733

guidelines to decide whether the order under challenge is an 'interlocutory order' or 'final order':

> *(1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute?*
>
> *(2) Was it made upon an application upon which the main dispute could have been decided?*
>
> *(3) Does the order, as made, determine the dispute?*
>
> *(4) If the order in question is reversed, would the action have to go on.*

If these guidelines are applied to the facts of the present case, the order impugned in this revision is not a final order. Therefore, the revision is barred by proviso to Section 115 of C.P.C. On this ground also, the Civil Revision Petition is liable to be dismissed at the stage of admission.

In view of our foregoing discussion, we find no ground to interfere with the order passed by the Executing Court and consequently, the revision is liable to be dismissed at the stage of admission itself.

In the result, the Civil Revision Petition is dismissed leaving it open to the petitioners to pursue the remedies available in accordance with law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(M. SATYANARAYANA MURTHY, J)

06th December, 2018
JSU

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Civil Revision Petition No.6918 of 2018

Date: 06.12.2018

JSU