

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1247 of 2019

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, is filed by the petitioner/judgment debtor No.2, challenging the order, dated 25.02.2019, passed in E.P.No.43 of 2015 in O.S.No.3246 of 2002, by the IV Junior Civil Judge, City Civil Court, Hyderabad, whereby, the salary of the petitioner/judgment debtor No.2 was ordered to be attached to satisfy the decree, dated 15.07.2003, passed in favour of the 1st respondent/Decree Holder.

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the revision petitioner/judgment debtor No.2 would submit that the Court of Execution cannot travel beyond the scope of Section 146 of the Indian Contracts Act, 1872, which stipulates that co-sureties are liable to contribute equally to pay the debt, which remains unpaid by the principal debtor. There are five judgment debtors against whom the decree is passed. The Court of Execution proceeded only against the revision petitioner/judgment debtor No.2, despite the fact that there are five judgment debtors and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition.

4. On the other hand, the learned counsel for the 1st respondent/Decree Holder would submit that when there are several judgment debtors in a decree, it is the prerogative of the decree holder to proceed against any one of them. There is no infirmity in the order under challenge and ultimately prayed to dismiss the Civil Revision Petition.

5. Admittedly, the 1st respondent/Decree Holder obtained decree against five judgment debtors, including the revision petitioner/judgment debtor No.2. The decree-holder cannot be compelled to initiate execution proceedings only as against a particular judgment debtor, when all the judgment debtors are ordered to satisfy the decree. The decree holder's right of choice cannot be scuttled by the dictates of the judgment-debtor/s. Under these circumstances, the order of the Court below attaching the salary of the revision petitioner/judgment debtor No.2 to satisfy the decree is not erroneous. The Court below did not exceed its jurisdiction in passing the impugned order. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

25th September, 2019
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