

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.6024 OF 2016

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 ('CPC'), is filed by the petitioner/Decree Holder, challenging the order dated 28.04.2016 passed in E.A.No.114 of 2008 in E.P.No.79 of 2006 in O.S.No.184 of 2001 by the learned Senior Civil Judge, Khammam.

2) Heard Sri P. Durga Prasad, learned counsel for the petitioner, Sri V.V.Raghavan, learned counsel for the respondent No.7 and perused the record.

3) Learned counsel for the revision petitioner would contend that respondent No.7 herein/Sri Y.B. Krishna Rao, Deputy Executive Engineer (Dy.E.E), Office of Panchayath Raj, RWS, Mahabubabad, Warangal District, violated the orders of the Court below inspite of service of notice on him on 03.05.2006. As per Order XXI Rule 48 of CPC, the respondent No.7 being the Drawing and Disbursing Officer, is a garnishee. The Court below erred in dismissing the subject E.A.No.114 of 2008. The Court below ought to have fixed the liability on respondent No.7 for disobeying the order of attachment and ultimately prayed to allow the revision petition by setting aside the impugned order.

4) On the other hand, learned counsel for the respondent No.7 would vehemently contend that the respondent No.7 (Dy.E.E) is not the garnishee as he was not the Drawing and Disbursing Officer, at the relevant point of time. If any amount is due to the petitioner/

Decree Holder, the same is required to be recovered from the Government, in terms of Order XXI Rule 48(3) CPC. Under no circumstances, the respondent No.7 is personally liable to pay the leave encashment amount of Rs.1,03,709/- of Judgment Debtor No.1 (J.Dr.No.1) in the subject E.P proceedings and ultimately prayed to dismiss the revision petition and sustain the impugned order.

5) In view of the submissions made by both sides, the point for determination is:

“Whether the impugned order dated 28.04.2016 passed in E.A.No.114 of 2008 in E.P.No.79 of 2006 in O.S.No.184 of 2001 by the learned Senior Civil Judge, Khammam, is liable to be set aside?”

6) **POINT:** It is pertinent to state that both parties have led evidence in the subject E.A.No.114 of 2008 in E.P.No.79 of 2006 on the file of Senior Civil Judge, Khammam and ultimately, the Court below held that Sri Y.B. Krishna Rao, Dy.E.E, is not liable to pay the leave encashment amount of Rs.1,03,709/-, which would have been deducted from the salary of J.Dr.No.1. Consequently, the E.A.No.114 of 2008 filed by the revision petitioner was dismissed. There is specific evidence of respondent No.7-Sri Y.B.Krishna Rao, that at the relevant point of time he was not the Drawing and Disbursing Officer and at the most he used to prepare bills and send proposals to the Executive Engineer, RWS, Hanmakonda (Drawing and Disbursing Officer), for passing of the bills. It is also borne by the record that notice of attachment of leave encashment of J.Dr.No.1 was served on 03.05.2006 in the office of Deputy Executive Engineer and it was received by one Ch.Laxmana Chary, who working as Senior Assistant in that office. There is also record to show that service of said notice was not brought to the notice of Sri Y.B.Krishna Rao, Deputy

Executive Engineer by said Ch.Laxmana Chary. Furthermore, the Deputy Executive Engineer is not the competent authority to deduct the amount and deposit the same in the Court. There was no communication to the Deputy Executive Engineer to attach the leave encashment amount of J.Dr.No.1. It is also borne by the record that there is no wilful and deliberate default on the part of Deputy Executive Engineer in not depositing leave encashment amount belonging to J.Dr.No.1 to the credit of E.P.No.79 of 2006. Therefore, it is not appropriate either to summon Sri Y.B. Krishna Rao, Deputy Executive Engineer or to attach his salary. The Court below while dealing with the subject matter, elaborately discussed all the contentions raised by the petitioner. There is no illegality or infirmity in the impugned order. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

7) In the result, this Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

Dr. JUSTICE SHAMEEM AKTHER

Date: 30.08.2019
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