

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL REVISION PETITION NO: 1872 OF 2019

(Petition Under Article 227 of the Constitution of India against the order and Decree dated 20.07.2019 made in E.A.No.665 of 2017 in E.P.No.9 of 2016 in O.S.No.809 of 2012 on the file of the Court of the XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad)

Between:

Maramreddy Subba Reddy, S/o. Seshi reddy, aged 35 years, Occ. Agriculture, R/o. LIG B -79, Sr. A.S. Rao Nagar, Hyderabad.

...PETITIONER

AND

- 1. D. Buchi Reddy, S/o. Narsi reddy, aged 58 years, Occ. Retd., Employee, R/o. H. No. 72/2, Subhashnagar, Opp. Nagarjuna Nagar Colony, Kushaiguda, ECIL Post, Hyderabad - 500062.**
- 2. Chittor Sadasiva Rao, S/o. Raghunadha Rao, aged 53 years, Occ. Employee, B.E.L. Nacharam, Hyderabad, R/o. Plot No. 144, R.K. Society, Secunderabad.**

...RESPONDENTS

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to extended the interim order dt.22/08/2019 passed in IA no.2/2019 in CRP No.1872/2019.

Counsel for the Petitioner : SRI. R.DHEERAJ SINGH

Counsel for the Respondents: ---

The Court made the following: ORDER

THE HON' BLE SRI JUSTICE A. VENKATESHWARA REDDY**Civil Revision Petition No.1872of 2019****ORDER:**

This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure (for short, 'CPC') assailing the impugned order dated 20.07.2019 in E.A.No.665 of 2017 in E.P.No.9 of 2016 in O.S.No.809 of 2012 on the file of learned XIV Additional District and Sessions Judge, Ranga Reddy, filed under Rules 230 to 236 of Civil Rules of Practice and Circulation Orders, 1980 against the respondents/judgment debtors praying to issue a Cheque for a sum of Rs.16,24,929/- to the petitioner/deGREE holder therein.

2. As per the grounds of revision, the order of the executing Court is contrary to law; that the executing Court, on the one hand, while observing that the High Court order in CRP No.3496 of 2018 held that Surety is deemed to have stepped into the shoes of judgment debtor by virtue of his having parted with his own money in the capacity of guarantor, on the other hand, held that the liability of surety is confined to a sum of Rs.11,20,000/- only; that the reasoning of the executing Court is inconsistent in its own order; that the liability of surety is coextensive with that of the principal debtor, the right over the Fixed Deposit Receipts furnished by the surety towards the debt has ceased the moment the suit is decreed, thereby the interest accrued on the Fixed deposit receipts becomes the part of the debt money and that the petitioner/Decree holder alone is only entitled to Rs.6,70,929/- as of July, 2019; that the trial Court decreed the suit with costs and future interest at 12% per annum on the principal amount of Rs.8.00 lakhs from the

date of filing the suit i.e., 05.09.2012 till realization against the defendant therein; that since the surety of stepped into the shoes of judgment debtor the liability rests on him; that the judgment and decree passed by the trial Court became final since no appeal was filed against the decree; that the table shown indicates the interest accrued on the principal amount and the costs of the suit as per the decree wherein it is mentioned Rs.6,70,929 is mentioned as the interest. Accordingly, prayed to set aside the order and decree dated 20.07.2019 passed in E.A.No.665 of 2017 in E.P.No.9 of 2018 in O.S.No.809 of 2012 on the file of learned XIV District and Sessions Court, at Ranga Reddy, at L.B.Nagar, and to pass any such other orders.

3. On a perusal of the order impugned dated 20.07.2019, it is found that E.A.No.665 of 2017 is filed under Rules 230 to 236 of Civil Rules of Practice and Circular Orders, 1980, against respondent/judgment debtors praying to issue cheque for a sum of Rs.16,24,929.

4. The facts of the case are that O.S.No.809 of 2012 was filed for recovery of amount of Rs.11,20,000/- and to grant subsequent interest at Rs.8 lakhs at the rate of 24% per annum. As per the judgment, the defendant has filed written statement denying the contentions of the plaintiff. Issues were settled and after full-fledged trial, the suit O.S.No.809 of 2012 was decreed on 09.12.2015.

5. It is pertinent to note that at the time of filing of the suit I.A.No.2721 of 2012 was filed for attachment before judgment under Order XXXVIII Rule 5 CPC. Accordingly, the defendant in the O.S.No.809 of 2012, Sri Chittoor Sadasiva Rao has furnished

security for the suit amount of Rs.11,20,000 by way of deposit of FDRs bearing No.673218 for Rs.6,20,000/- and FDR No.673219 of Rs.5,00,000 dated 25.09.2012 on the name of D. Buchi Reddy who is the first respondent herein. The said D.Buchi Reddy/first respondent has executed security bond under Order XXXVIII Rule 5 of Code of Civil Procedure stating that he has voluntarily become a surety binding over himself and his heirs to the said Court that the said defendant shall produce and place at the disposal of the Court, when required, properties specified in the schedule of the value of the same or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing he bind himself, his heirs and executors, to pay to the said Court, at its order, the said sum of Rs.11,20,000/- or such sum not exceeding the said sum as the Court may adjudge.

6. Accordingly, the said Buchi Reddy furnished two bonds, one for Rs.6,00,000/- and another for Rs.5,20,000/-, i.e., together for an amount of Rs.11,20,000/- or such sum not exceeding the said amount as the Court may adjudge. Thus, the liability of Buchi Reddy in terms of the security furnished by him is only limited up to Rs.11,20,000/- and not beyond the said amount.

7. In the order impugned dated 20.07.2019, the learned Presiding Officer of the Court of XIV Additional District Judge, has allowed the petition partly, and issued crossed cheque for Rs.11,20,000/- in favour of the petitioner herein for crediting the same in his Account No.151210100109973 of Andhra Bank, Nizampet Road Branch, Kukatpally, Hyderabad. Part satisfaction memo is filed and the same is recorded.

8. It is further mentioned that the surety D. Buchi Reddy is entitled to withdraw the remainder of the amount i.e., Rs.5,18,741/-, lying to the credit of the E.P. in accordance with law. This aspect of the order is seriously disputed by the revision petitioner stating that the liability of the surety is not only limited to Rs.11,20,000/- and since he has stepped into the shoes of the defendant, he is liable to pay the entire decretal amount; and the trial Court erred in holding that the said surety Buchi Reddy is entitled to withdraw Rs.5,18,741/-.

9. Learned counsel for the revision petitioner has mainly relied on the order passed in CRP No.3496 of 2018 by this Court wherein the order dated 16.04.2018 passed by the learned XIV Additional District and Sessions Judge, Ranga Reddy District, at L.B.Nagar, in E.A.No.665 of 2017 in E.P.No.9 of 2016 in O.S.No.809 of 2012 was challenged, and this Court has set aside the said order with an observation that it would be blatant violation of principles of natural justice to not allow an opportunity of hearing to the petitioner-guarantor when it is his money that is sought to be appropriated by the decree holder. The petitioner-guarantor is deemed to have stepped into the shoes of the judgment debtor by virtue of his having parted with his own money in the capacity of a guarantor. Accordingly, the order in E.A.No.665 of 2017 was set aside and the learned XIV Additional District and Sessions Judge was directed to allow the petitioner to participate in the execution proceedings in the capacity of a guarantor of the judgment debtor-defendant and to afford him an opportunity of hearing before deciding E.A.No.665 of 2017 in E.P.No.9 of 2016 in O.S.No.809 of 2012.

10. On a careful perusal of the orders in CRP No.3496 of 2018, and the surety bond executed by the surety D. Buchi Reddy pursuant to the orders in I.A.No.2721 of 2012 in O.S.No.809 of 2012, on 26.09.2012, the liability of the surety is only restricted to the extent of Rs.11,20,000/- or such sum not exceeding the said sum as the Court may adjudge. When an order of attachment before judgment under Order XXXVIII Rule 5 CPC was passed in I.A.No.2721 of 2012, the defendant in O.S.No.809 of 2012 has furnished the surety of D. Buchi Reddy who has deposited Rs.11,20,000/- and executed the bond as mentioned at material papers at page Nos.29 to 32 filed along with this civil revision petition. Thus the surety D.Buchi Reddy has restricted his liability not exceeding Rs.11,20,000/- and executed bond to that effect before the Court.

11. Section 128 of the Law of Contract deals with the liability of surety and lays down that the liability of surety is coextensive with the principal debtor unless it is otherwise provided by the contract.

12. Here, in the case on hand, the surety has executed a bond while depositing the fixed deposit receipts for an amount of Rs.11,20,000/- and in unequivocal terms it is mentioned in the surety bond stating that he is binding over himself to pay the said amount of Rs.11,20,000/- or such sum as may be sufficient and not exceeding the said sum as the Court may adjudge. Though the surety D.Buchi Reddy has deposited FDRs for Rs.11,20,000/- when a notice under Order 38 Rule 5 was served on the defendant, it is clearly mentioned in the surety bond that his liability is not exceeding Rs.11,20,000/- and under no circumstances it will

exceed that amount since nowhere in the surety bond executed it is mentioned that the liability of said Buchi Reddy is co-extensive with that of defendant for any amount beyond Rs.11,20,000/-. On the contrary, it is mentioned otherwise in the surety bond in unequivocal terms restricting the liability not exceeding Rs.11,20,000/- under any circumstances. Accordingly, the trial Court through the order impugned has rightly issued a cheque for an amount of Rs.11,20,000/- only to the revision petitioner/decreed holder/plaintiff and the remainder amount of Rs.5,18,741/- (interest accrued on the Fixed Deposit) lying to the credit of E.P. was ordered to be withdrawn by D.Buchi Reddy.

13. The learned XIV Additional District Judge has rightly passed the order taking into consideration of the contents of the bond executed by the surety as the surety D.Buchi Reddy has otherwise restricted his liability for the amount not exceeding Rs.11,20,000/- under any circumstance. The impugned order is in strict conformity with the terms of surety bond executed by the surety and I do not find any infirmity or irregularity in the impugned order, and the civil revision petition is liable to be dismissed.

14. **In the result**, for the reasons stated above, this Civil Revision Petition is dismissed as devoid of merit, and the order dated 20.07.2019 passed by the trial Court is confirmed. No costs. As a sequel, miscellaneous petitions, if any pending in this civil revision petition, shall stand closed.

//TRUE COPY//

SD/-K.ONESIM
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The XIV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad
2. One CC to Sri R.Dheeraaj Singh, Advocate (OPUC)
3. Two CD Copies
4. One Spare Copy

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HIGH COURT

DATED:02/11/2021



ORDER

CRP.No.1872 of 2019

DISMISSING THE CRP.
WITHOUT COSTS.

MR
08/12

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