

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Civil Revision Petition No.956 of 2022

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the judgment debtor is preferred challenging the order, dated 23.03.2022, allowing E.P. No.63 of 2018 in O.S.No.52 of 2016 on the file of the Court of Junior Civil Judge, Atmakur, filed by the DHr under order XXI Rule 48 CPC, by which the salary of the JDr to an extent of Rs.5,050/- per month for 24 months was directed to be attached.

2. Heard Sri Ajay Kumar Kanaparthi, learned counsel for the revision petitioner/JDr. In spite of service of notice, no appearance has been on behalf of the respondent/DHr.

3. The respondent/D.Hr. filed the execution petition for recovery of a sum of Rs.2,05,750/- with subsequent interest as per the decree dated 01.05.2017, in O.S.No.52 of 2016, by way of attachment of salary of the revision petitioner/JDr. In spite of granting opportunity, no counter has been filed by the JDr. As such, after hearing DHr the execution court allowed the execution petition. The operative portion of the order passed therein reads as under:

“In the result, the petition is allowed. The DDO of the J.Dr. is directed to attach an amount of Rs.5,050/-p.m. for 24

months. The D.Hr is at liberty to have the remaining E.P. amount recovered by any other means open and available to him under law. In case there is no attachable portion left in the salary of the J.Dr., the DDO of the J.Dr. is directed to inform the same to this Court. Issue salary attachment warrant under Order XXI Rule 48 against the salary of the J.Dr. on payment of process. The petition is closed accordingly.”

4. Having been aggrieved by the same, this revision petition is filed contending that as per Section 60 CPC, salary of a person can be attached only to an extent of 1/3rd of the salary after deducting Rs.1000/- and that for a total period of 24 months only, but there has been already an order of attachment of salary of JDr for realization of the decretal amount in E.P. No.16 of 2019 in O.S.No.12 of 2018 on the file of the Court of Senior Civil Judge, Atmakuru, as per the letter dated 04.03.2020 addressed by DDO to JDr stating that there will be attachment of salary for Rs.11,467/- p.m. for a period of 24 months or till realization of the warrant amount of Rs.9,34,515/- whichever is earlier, and therefore, there cannot be another attachment of the salary of JDr until after completion of 12 months from the end of the period of 24 months as referred in the letter dated 04.03.2020.

5. The learned counsel for the revision petitioner submitted that in the decision in **Shaik Noorjahan Vs. M. Rajeshwari**¹, it is observed that when once there is an order of attachment of a portion of the

¹ AIR 2010 AP 207

salary of JDr, further attachment of salary is not permitted until expiry of 12 months after completion of 24 months of attachment.

6. After filing this revision petition an interim order dated 06.05.2022 was passed suspending the impugned order 08.07.2022.

7. The learned counsel for the revision petitioner submitted that after passing of the interim order of suspension, there has been no attachment and realization of the amount from the salary of the revision petitioner as directed in the impugned order.

8. Section 60(1) & proviso (i) & (ia) CPC reads as under:

60. Property liable to attachment and sale in execution of decree --

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by any other person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:--

(a) xxx xxxxxxx

(b) xxx xxxxxxx

(c) xxx xxxxxxx

(d) xxx xxxxxxx

(e) xxx xxxxxxx

(f) xxx xxxxxxx

(g) xxx xxxxxxx

(h) xxx xxxxxxx

(i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.

(ia) one-third of the salary in execution of any decree for maintenance;"

8. The order of attachment directed in E.P.No.16 of 2019, ends by March 2022 and thereafter 12 months period would end by March 2023. Therefore, the rider in Section 60 CPC is no more a bar for execution of the decree by the respondent/DHr. In view of the bar under section 60 CPC, the order passed on 23.03.2022 is not sustainable and is liable to be set aside, however, it is left open to the execution court to pass another order afresh, the execution Court by ascertaining whether there is any other subsisting order of attachment before directing any further attachment.

9. With these observations, revision petition is allowed setting aside the order dated 23.03.2022 passed by the Junior Civil Judge, Atmakur, in EP No.63 of 2018 in O.S.No.52 of 2016 and directing the execution Court to pass orders afresh as aforesaid. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

09.08.2023
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B.S.BHANUMATHI, J

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DATED: 09-08-2023

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