



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE FOURTEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE DR JUSTICE K MANMADHA RAO**  
**CIVIL REVISION PETITION NO: 780 OF 2018**

**Between:**

1. CORPORATION BANK Proddatur Branch,  
Proddatur Post, Kadapa District, A.P.  
Rep. by its Authorised Officer Mr. H. Moti kiran

**...PETITIONER(S)**

**AND:**

1. Gadhamsetty Ramachandra @ G.S. Ramachandra, and another S/o  
Sreekanth Babu  
Aged about 32 years,  
Door No. 11/444, Main Bazaar,  
Proddatur Post, Kadapa District, A.P.
2. Gudamcherla Mastan valli, S/o. Gudamcherla Modin Saheb, aged about  
51 years,  
R/o.22/252, Moulana Azaad Street No.2, Proddatur Town, Proddatur  
Post, Kadapa District, A.P.

**...RESPONDENTS**

**Counsel for the Petitioner(s): V DYUMANI (SC FOR CORP BANK)**

**Counsel for the Respondents: V NITESH**

**The Court made the following: ORDER**



**HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

**+ CIVIL REVISION PETITION Nos.780, 792, 813, 819, 950 and  
971 of 2018**

**CRP No.780 of 2018**

Between:

# Corporation Bank,  
Proddatur Branch

... Petitioner

And

\$ Gadhamsetty Ramachandr @  
G.S. Ramachandra and another

.... Respondents

JUDGMENT PRONOUNCED ON **14.06.2023**

**THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked  
to Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see  
the fair copy of the Judgment? - Yes -  
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**DR.JUSTICE K. MANMADHA RAO**



**\* THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

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# Corporation Bank,  
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G.S. Ramachandra and another

.... Respondents

**! Counsel for the Petitioner :** Smt. V. Dyumani

**^Counsel for Respondents:** Sri V. Nitesh

<Gist :

>Head Note:

? Cases referred:

1. AIR 1971 ANDHRA PRADESH 165
2. AIR 1958 ANDHRA PRADESH 31
3. AIR 1988 KERALA 285
4. AIR 1954 TRAVANCORE-COCHIN 243
5. AIR 1967 SUPREME COURT 1080



**HON'BLE DR. JUSTICE K. MANMADHA RAO**

**CIVIL REVISION PETITION No.780, 792, 813, 819, 950  
and 971 of 2018**

**COMMON ORDER :**

As the issue involved in all these civil revision petitions is one and the same, they are being taken up for hearing as well as disposed of by way of this Common Order.

2. Heard Mrs. V. Dyumani, learned counsel appearing for the petitioner and Mr. V. Nitesh, learned counsel appearing for the respondents.

3. Since the facts in all the civil revision petitions are similar and identical, therefore CRP No.780 of 2018 is taken as lead case, and the facts therein hereinafter will be referred to for convenience.

4. The facts of the case are that the first respondent herein filed suit in O.S No.444 of 2012 against the petitioner herein before the Court of Senior Civil Judge, Proddatur based on a pronote and obtained decree on 17.04.2014. Later, the first respondent filed E.P.No.81 of 2014 and got



attached the surplus amount of Rs.59,93,997/- lying in the hands of garnishee i.e., the Branch Manager, Corporation Bank, Proddatur payable to the second respondent. Thereafter, vide order dated 20.02.2015, the said E.P. was allowed and attachment was made absolute by the Court below. Hence the impugned I.A. has been filed seeking to send for the attached E.P. amount from garnishee. However, the said I.A. was allowed by Court below vide order dated 04.10.2017 on the ground that since the garnishee disobeyed the attachment order passed by the Court below in the E.P and had not shown sufficient cause for not remitting the E.P. amount and hence directed to pay the attachment warrant amount in EP No.81 of 2014 to the first respondent within two months with future interest at 6% p.a. failing which the first respondent is at liberty to proceed against the garnishee in accordance with law. Aggrieved by the same, the present civil revision petition came to be filed.

5. Learned counsel for the petitioner submits that the second respondent and his two brothers namely Gudamcherla Mahaboob Basha and Gudamcherla Answar Hussian are joint owners of the shop rooms at Proddatur.



The second respondent borrowed loan from their bank for which his two brothers were stood as guarantors and kept their property (two shop rooms) with bank towards collateral security. Later they committed default of payment of loan amount and hence the loan account became NPA. Thereafter, the bank sold away two shop rooms in auction on 19.3.2014 for Rs.83,00,000/- and appropriated an amount of Rs.23,71,353/-towards the loan debt due by the respondents and closed the account. He further submits that the Court below failed to see that one G. Mahaboob Basha and G. Ansar Hussain filed suit in O.SNo.58 of 2013 before the learned II Additional District Judge Court, Kadapa at Proddatur for partition on the property mortgaged to the petitioner bank and the said suit was filed against Gudamcherla Masthan Valli and Corporation Bank, Proddatur Branch. He further submits that the petitioner divided the balance sale proceeds i.e., Rs.59,28,646.99 ps. Into three shares and kept one share relating to the second respondent/J.Dr and remaining two shares amount was paid on 15.5.2014 to Gudamcherla Mahaboob Basha and Gudamcherla Ansar Hussain.



6. Learned counsel for the petitioner mainly submits that the petitioner has received the orders from Proddatur courts, as follows:

S.No.	Garnishee orders	Dated	E.P. amount in Rs.	Orders issued by Proddatur Court
1.	E.P.No.52/2014 in O.S.No.151/2013	1.4.2014	92,000/-	JCJ
2.	I.A.No.248/2014 in O.S No.271/2013	2.4.2014	9,37,713	SCJ
3	E.P.No.65/2014 in O.S.No.449/2012	2.4.2014	9,37,713	SCJ
4.	I.A No.387/2014 in O.S.No.144/2012	28.4.2014	2,00,000/-	SCJ
5.	I.A No.385/2014 in O.S.No.134/2014	2.4.2014	3,00,000	SCJ
6.	i.A.No.393/2014 in O.S No.426/2012	5.5.2014	1,24,000	SCJ
7	I.A.No.306/2014 in O.S No.123/2014	17.4.2014 28.8.2014	3,46,765	SCJ
		Total	22,50,478	

7. Later, the petitioner Bank also received the following attachment orders:

S.No.	Garnishee orders	Dated	E.P. amount in Rs.	Orders issued by Proddatur Court
1.	I.A.No.439/2014 in O.S No.203/2013 and E.P.no.193/2014	4.6.2014 9.1.2015	6,30,479	SCJ
2.	E.P.No.153/2014 in O.S.No.271/2013	10.10.2014	2,00,000	SCJ



3	E.P.No.2/2014 in O.S.No.444/2012	16.5.2014	3,77,899	SCJ
4.	E.P.No.3/2014 in O.S.No.445/2012	16.5.2014	3,77,896	SCJ
5.	E.P.No.4/2014 in O.S.no.446/2012	16.5.2014	10,21,213	SCJ
6.	E.P.No.5/2014 in O.S No.447/2012 and E.P.No.84/2014 in O.S No.447/2012	16.05.2014 15.12.2014	4,49,912	SCJ
7	E.P.No.6/2014 in O.S No.448/2012 and E.P.No.85/2014 in O.S No.448/2012	16.5.2014 15.12.2014	1,85,524	SCJ
	E.P.No.431/2014 in O.S No.160/2014	02.06.2014 9.01.2015	6,24,000	SCJ
9	E.P.No.139/2014 In O.S No.426/2012	22.09.2014	1,42,633	SCJ

8. Learned counsel further submits that the Court below failed to see that the petitioner received 16 garnishee orders/attachment orders against Gudamcharla mastanvali from the Junior Civil Judge Court and Senior Civil Judge Court Proddatur and the petitioner has paid Rs.19,76,216.99 ps as detailed below:

- i) In compliance of the Garnishee order dated 1.4.2014 issued by the Court of the Junior civil Judge, Proddatur, the petitioner paid Rs.92,000/- on 23.12.2014.
- ii) In compliance of the Garnishee order dated 4.6.2014 & 9.1.2015 issued by the Court of Senior Civil Judge in E.P. No.52/2014 in O.s No.151/2013, the petitioner deposited an amount of Rs.6,30,479/- pm 20.01.2015.
- iii) In compliance of the Garnishee order dated 2.4.2014 & 29.11.2014 issued by the Court of Senior Civil Judge in E P No.193/2013, the petitioner has deposited an amount of Rs.9,37,713/- on 18.11.2014.





- iv) In compliance of the Garnishee order issued by the Court of Senior Civil Judge, Proddatur, the petitioner has deposited an amount of rs.2,75,412.99 ps on 10.02.2015.

9. On the other hand, learned counsel appearing for the respondents submits that the property was sold by the petitioner/garnishee for Rs.83,00,000/- and after appropriation of the loan debt the surplus amount of Rs.59,28,646/- of the second respondent was in the hands of garnishee, instead of sending the attachment amount in this case the garnishee colluded with the decree holders in other E.Ps and settled other entire claims. The petitioner colluded with the second respondent and his two brothers and violated orders of this Court, thus, the petitioner committed an act of contempt in this regard,

10.As could be seen from the certified copies of sale deeds Exs. R1 and R2, no doubt the properties were purchased by the respondent and his two brothers jointly. However, one of the brothers of second respondent by name G.Ansar Hussain relinquished his 1/3<sup>rd</sup> share in favour of his two brothers in the shop room bearing D.No.22/450 (old D.No.22/261) under a registered relinquishment deed dated



15.12.2011. hence, the brother of second respondent G.Ansar Hussain has no share in the said shop. This Court further observed that, in the cross examination of RW.1, he clearly admitted that they did not verify the records about the relinquishment deed executed by G.Ansar Hussain in favour of his two brothers vide Document No.13888/2011 dated 16.12.2011. the other brother of the second respondent by name G.Ansar Husain is having 1/3<sup>rd</sup> share in shop room bearing D.No.22/449 (Old D.No.22/260) only RW.1 admitted in cross examination that they sold away two shop rooms in auction for Rs.40,00,000/- each and distributed the surplus amount equally among three brothers. It seems that the petitioner paid equal amount of Rs.19,76,217/- to the said G.Ansar Hussain though he relinquished his share in one of the shops/auctioned property in favour of the second respondent and his brother G. Mahaboob Basha.

11. It is pertinent to mention here that as per Order 21 Rule 46-B and C of CPC, reads as under:

**46-B order against garnishee** : where the garnishee does not forthwith pay into Court the amount due from him to the



judgment-debtor or so much thereof as its sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice and on such order, execution may issue as though such order were a decree against him.

**46-C : Trial of disputed questions:** where the garnishee disputes liability the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit and upon the determination of such issue shall make such order or orders as it deems fit:

12. On perusing the entire material available on record, it is observed that, as per the Bank records, all the three brothers i.e., the second respondent and his two brothers are having equal rights in the property in fact at the time of creating Mortgage in favour of the bank, all the three brothers together executed registered Mortgage deed in favour of the Bank and created mortgage. It is also observed that the alleged relinquishment deed said to have been executed by one of the brother of J.Dr was never brought to the notice of the Bank. Moreover the brothers of the J.Dr filed suit for partition in O.S.No.58/2013 before II Additional District Judge, Kadapa for partition. Therefore, the petitioner after taking instructions from the higher



authorities divided the excess sale proceeds into three equal shares and kept only the share of the J.Dr and paid the shares of the other brothers to them.

13. Learned counsel for the petitioner has relied upon a catena of decisions reported in :

1). In **Nadikatla Anjanna and others v. Bandi Ramakrishna and others**<sup>1</sup>, wherein the Andhra Pradesh High Court held that :

*The other objection against the validity of the attachment however seems to be well-founded. It was held in Macdonald v. Tacquash Gold Mines Co., (1884) 13 QBD 535, that the debt, legal or equitable, owing by a garnishee to a judgment-debtor, which can be attached to answer the judgment debt, must be a debt due to such judgment-debtor alone, and where it is only due to him jointly with another person, it can not be so attached. This view was approved by the Indian Courts and it will suffice to refer to one such decision viz., Batch v. Sulaiman Sahib, AIR 1956, Mad 163, in which it was held that under O.21. R. 46 Civil P.C. an attachment can be made of a debt due to a judgment-debtor, and another, learned counsel for the respondent has not been able to refer me to any decision contrable to refer me to any decision contra. I must, therefore agree with the appellants that the attachment effected by the Court below is not valid for this reason.*

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<sup>1</sup> AIR 1971 ANDHRA PRADESH 165



2). **G.V. Raghavayya v. Chamria Talkie Distributors and another**<sup>2</sup>, wherein this court held that :

*. Even otherwise, there was a valid objection to the claim of the plaintiff. It was open to the garnishee to show that nothing was payable by him to the 2nd defendant. The amount of Rs. 150/- was appropriated by him towards the balance of the share of the collections due to the distributor and also towards the damages sustained by him by reason of one of the prints of the picture having been spoiled by the 2nd defendant,*

*The very purpose of depositing the money was to enable the 1<sup>st</sup> defendant to recoup any loss to be sustained by him out of it. For it is open to the garnishee to show that nothing was due and payable to him by the judgment-debtor. The decree-holder cannot by means of attachment stand in a better position as regards the garnishee than the judgment-debtor and obtain from him a relief which the judgment-debtor himself could not.*

3). In another case reported in **Executive Engineer, T.C. Division, K.S.E. Board, Palghat vs. J.G. Sharma and another**<sup>3</sup>, wherein the Kerala High Court held that

*...”No notice sent to garnishee as required under R.46A – However garnishee appearing in court in response to letter sent to him by court- contentions raised by garnishee in counter – affidavit can be treated as objections under R.46-C.*

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<sup>2</sup> AIR 1958 ANDHRA PRADESH 31

<sup>3</sup> AIR 1988 KERALA 285



*The appellant appeared in court only in response to the letter and filed counter-affidavit raising certain contentions. Since he raised his contentions in the counter affidavit, the same can be treated as objections contemplated under R.46C, even in the absence of a formal notice under R.46A. That being so, the court below had a duty under R.46C to order that the disputed question be tried as it were an issue in a suit and to decide the issue. In the impugned order the Court below did not consider the merits of the dispute raised by the appellant. The view taken by the Court below that the contention raised that no amount is available with him is not open to him is unsustainable. The observation of the court below that garnishee had no case that he is not the garnishee does not convey any meaning. He is a garnishee in the sense that he received a prohibitory order. But it is open to him to contend that he does not have any money belonging to the judgment-debtor or due to the judgment-debtor. If such a contention is raised at the appropriate stage in response to notice under R.46A the Court has a duty to consider the same.*

4). In another case reported in **Govt. of the United State of Travancore and Cochin v. Bank of Cochin Ltd<sup>4</sup>**, wherein the Travancore-Cochin High Court held that :

*“An attachment does not create any charge on the attached property and it does not confer any title in the attaching creditor. The attachment merely prevents a private alienation of the attached property.*

*. In the present case, the garnishee's plea was that the amount that was due to the 2nd defendant-judgment-debtor had already been adjusted towards a debt due from him to the garnishee and as such there was no amount available with the garnishee to be*

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<sup>4</sup> AIR 1954 TRAVANCORE-COCHIN 243



*produced before court in obedience to the order issued on the strength of the attachment placed at the instance of the decree-holder. Such being the nature of the garnishee's plea, the larger question of priority in respect of crown debts does not really arise for decision in these proceedings. The lower court appears to have misconstrued the garnishee's plea as a plea of set off and has proceeded to consider the matter on the assumption that the amount due to the judgment-debtor is still available with the garnishee.*

*It is well settled that an attachment does not create any charge on the attached property and that it does not confer any title in the attaching creditor. The attachment merely prevents a private alienation of the attached property. This is obvious from the provisions in R. 46 of O. 21 of the Code of Civil Procedure, which prescribes the mode of attaching a debt. Sub-clause (1) of Clause (c) of that rule states that in the case of a debt the attachment shall be made by a written order prohibiting the creditor from recovering the debt and the debtor from making payment thereof, until the further order of the Court.*

*The question of sustainable in law, the garnishee's rights in respect of a debt attached by the holder of a decree against the person to whom the debt was due, was considered by the Calcutta High Court in 'Amarendra Nath v. S. Banerjee and Co., AIR 1924 Cal 1068 (E), and there the garnishee's claims to have all accounts settled with the judgment-debtor was upheld and the balance available after such adjustment was alone held to be recoverable by the attaching decree-holder on his becoming the purchaser of the debt attached. In that case, it was pointed out that the attaching decree-holder can only obtain what the judgment-debtor could honestly give him and cannot by means of the attachment stand in a better position as regards the garnishee than does the judgment-debtor. The same principle has been upheld by the Patna*



*High Court in- 'Kameswar Singh v. Kuleswar Singh', AIR 1912 Pat 508 (F). Thus it is clear that the garnishee is entitled to have all his contentions relating to the adjustment and satisfaction of the debt attached, heard and decided before the claims arising out of the attachment are allowed to be enforced against him.*

5). In a case of **Chouthi Prasad Gupta v. Union of India and others**<sup>5</sup>, the Hon'ble Supreme Court held that :

*A bare perusal of S. 145 shows that it applies to debtor, except when a person has become liable as surety. Now the mere fact that an attachment was made of 41 joists said to be lying with the Sub-Divisional Officer by the issue of the prohibitory order under O. XXI, R. 46 does not make the Sub-Divisional Officer or the Union of India a surety for the performance of the decree which was in execution. There was no surety bond taken from the Sub-Divisional Officer and the joists were not actually seized by the Court and handed over to the Sub-Divisional Officer as suparddar on the basis of a surety bond. If that had been done some question may have arisen whether the Sub-Divisional Officer did become a surety for the performance of the decree or part thereof. But where merely a prohibitory order is issued under O. XXI, R. 46 (1) and attachment is made in that manner, there can be no question of the person to whom the prohibitory order is issued becoming a surety for the performance of the decree. We, therefore, agree with the High Court that S. 145 of the Code was not applicable to this case and the execution Court was completely wrong in its view holding that the Sub-Divisional Officer became a surety simply because attachment had been made in the manner provided in O. XXI, R. 46 (1). The appeal fails and is hereby dismissed with costs to the Union of India.*

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<sup>5</sup> AIR 1967 SUPREME COURT 1080





14. Learned counsel for the petitioner while relying upon the above citations submitted that the petitioner Bank has deposited the balance amount of Rs.2,75,412.99 ps to the credit of Senior Civil Judge's Court on 10.2.2015 and the same have to be distributed by this Court among the Decree Holders by following Section 73 CPC. Therefore, prayed to allow these CRPs by setting aside the impugned orders.

15. Having regard to the facts and circumstances of the case and on perusing the decisions of this Court as well as Hon'ble Supreme Court relied upon by the learned counsel for the petitioner, this Court is of the view that, where merely a prohibitory order is issued under Order 21 Rule 46(1) and attachment is made in that manner, there can be no question of the person to whom the prohibitory order is issued become a surety for the performance of the decree. This Court further observed that, the garnishee does not become a surety under Section 145 CPC by virtue of the prohibitory order issued under Order 21 Rule 46 CPC.



16. In view of the foregoing discussion and the principles laid down in the above judgments, it is noticed that an attachment does not create any charge on the attached property and it does not confer any title in the attaching creditor. The attachment merely prevents a private alienation of the attached property. The view taken by the court below that the contention raised that no amount is available with him is not open to him is unsustainable. The observation of the Court below that garnishee had no case that he is not the garnishee does not convey any meaning. He is a garnishee in the sense that he received a prohibitory order. But it is open to him to contend that he does not have any money belonging to the judgment-debtor or due to the judgment-debtor. If such a contention is raised at the appropriate stage in response to notice under Rule 46A of CPC, the Court has a duty to consider the same. Therefore, this Court deems fit to allow these CRPs by setting aside the impugned orders under challenge.

17. Accordingly, all the Civil Revision Petitions are allowed. The impugned orders in all the revision petitions



are hereby set aside and remand back the matters to the Court below for fresh disposal in accordance with law, as expeditiously as possible, preferably, within a period of six (06) months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

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**DR. K. MANMADHA RAO, J.**

*Date : 14 -06-2023*

***Note : LR Copy to be marked.***

*(b/o)Gvl*



**HON'BLE DR. JUSTICE K. MANMADHA RAO**

**CIVIL REVISION PETITION No.780, 792, 813, 819, 950  
and 971 of 2018**

*Date : 14 .06.2023*

*Gvl*

