

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE EIGHTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 1719 OF 2015

Between:

1. MARGADARSI CHIT FUND PVT. LTD Having its branch at Tirupati, Rep. by its Manager/Foreman, C. Kesavulu Naidu, S/o. Late C. Krishnama Naidu.

...PETITIONER(S)

AND:

1. K. NARENDRA KUMAR & 4 OTHERS S/o. K. Ramu, Aged about 35 years, R/o. D.No.18/8/67, 2nd Floor, madhura Nagar, Tirupati, Chittoor District.
2. R. Jayaprada W/o. K. Raghavendra, Aged about 36 years, Working Senior Medical office, Casualty, SVIMS, Tirupathi, Chittoor District.
3. C. Yasoda, W/o. C. Reddeppa, Aged about 55 years, R/o. D.No.18-1-46/E, Santhi Nagar, Tirupathi, Chittoor District.
4. N. Mahesh Babu S/o. N. Ramachandraiah, Aged about 34 years, R/o. D.No.20-3-53/E, Upstairs, Erramitta, Sivajyothi Nagar, Tirupathi, Chittoor District.

...RESPONDENTS

Counsel for the Petitioner(s): P DURGA PRASAD

Counsel for the Respondents: SRICHARAN TELAPROLU

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.1719 of 2015

Between:

M/s. Margadarsi Chit Fund Private Limited, Having its branch at Tirupati, represented by its Manager/Foreman, C.Kesavulu Naidu, S/o. Late C.Krishama Naidu.

... Petitioner/Decree-holder/Plaintiff

Versus

1. K.Narendra Kumar, S/o. K.Ramu, 35 years, R/o.D.No.18/8/67, 2nd Floor, Madhura Nagar, Tirupati, Chittoor District.
2. R.Jayaprada, W/o. K.Raghavendra, 36 years, W/as.Senior Medical Office, Casualty, SVIMS, Tirupathi, Chittoor District.
3. C.Yasoda, W/o. C.Reddeppa, 55 years, R/o.D.No.18-1-46/E, Santhi Nagar, Tirupathi, Chittoor District.
4. N.Mahesh Babu, S/o. N.Ramachandraiah, 34 years, R/o.D.No.20-3-53/E, Upstairs, Erramitta, Sivajyothi Nagar, Tirupathi, Chittoor District.
5. A.Rajasekhar, S/o. A.Vittal Naidu, 34 years, R/o.D.No.16/1/213, Upstairs, Erramitta, Sivajyothi Nagar, Tirupathi, Chittoor District.

(Respondent Nos.1, 3 to 5 are not necessary parties in this CRP)

... Respondents/Judgment-debtors/Defendants

* * * * *

DATE OF ORDER PRONOUNCED : 18.04.2023.

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No

2. Whether the copy of Order may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the Order? Yes/No

B.V.L.N.CHAKRAVARTHI, J

*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.1719 OF 2015

% 18.04.2023

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(Respondent Nos.1, 3 to 5 are not necessary parties in this CRP)

... Respondents/Judgment-debtors/Defendants

! Counsel for the Revision

-petitioner

: Sri P.Durga Prasad

^ Counsel for the

Respondent No.2

: Sri T.Sri Charan

^ Counsel for the

Respondent Nos.1, 3 to 5

: Proforma Parties

< Gist:

> **Head Note:**

? **Cases referred:**

1. **2013 (6) ALT 798.**
2. **2017 (3) ALT (DB) 81 = 2017 (3) ALD 387 = 2017 (2) HLT 106.**
3. **Shriram Chits Private Limited vs. Manuri Ravi and others in CRP No.6499 of 2016, dated. 30.08.2016 on the file of High Court of Judicature, for the State of Telangana and for the State of Andhra Pradesh at Hyderabad.**
4. **2014 (6) ALT (DB) 69 = 2015 (2) ALD 166.**
5. **2012 (11)SCC 511.**
6. **1969 AIR (SC) 297.**
7. **1982 AIR (SC) 1497.**
8. **1987 AIR (SC) 1078.**
9. **1992 AIR (SC) 1740.**
10. **1986 AIR (SC) 868.**
11. **2009 9 SCC 478.**
12. **2010 AIR (SC) 3413.**

This Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTI

CIVIL REVISION PETITION NO.1719 of 2015

ORDER:

Heard Sri P.Durga Prasad, learned counsel for revision-petitioner/decreed-holder and Sri T.Sri Charan, learned counsel for respondent No.2/judgment-debtor No.2.

2. The contention of revision-petitioner/decreed-holder is that as per the decree passed against the judgment-debtors, all of them are jointly and severally liable for the decree amount but none of them discharged the decree amount, and therefore, execution petition was filed against the respondent No.2/judgment-debtor No.2 who is working as Senior Medical Officer, SVIMS, Tirupati, for realization of the decree debt, as her liability towards the decree amount is coextensive with that of the other judgment-debtors.

3. The contention of respondent No.2/judgment-debtor No.2 is that the revision-petitioner/decreed-holder filed execution petition against respondent No.2/judgment-debtor No.2 alone, by leaving the other judgment-debtors, and therefore it is not just and proper.

4. The learned Trial Court 'Dismissed' the execution petition filed by the revision-petitioner/decreed-holder on 21.11.2014 by considering the judgement in **Jaichand T.Gangwal vs. Shriram Chits Private Limited and others**¹ relied by the respondent No.2/judgment-debtor No.2, observing that if other judgment-debtors are omitted from the array of the parties in the execution petition, the one who is singled out would face hardship and thereby gave a finding that filing of execution petition against judgment-debtor No.2 by leaving out judgment-debtor Nos.1, 3 to 5 will cause hardship to judgment-debtor No.2.

5. In the light of above rival contentions, the point that would arise in the revision-petition is as under: -

“Whether the Trial Court committed any material irregularity in the Order, dated 21.11.2014 passed in E.P.No.71 of 2013 in O.S.No.449 of 2008?”

6. **P O I N T**: -

There is no dispute about the joint and several liability of all the judgment-debtors in discharging the debt due under the decree as ordered by the Trial Court in O.S.No.449 of 2008. Accordingly, the decree-holder proceeded against the judgment-debtor No.2, who is respondent No.2 herein, seeking to attach her

¹ 2013 (6) ALT 798.

salary, as she is being one of the guarantors towards the debt due by the principal debtor.

7. Now, it must be seen whether the decree-holder is entitled to proceed against the judgment-debtor No.2 only, leaving the other judgment-debtors, who also suffered a joint and several decree.

8. The learned counsel for revision-petitioner/decreed-holder placed reliance on the decision rendered by this Court in **Punyamuthula Venkata Viswa Sundara Rao and another vs. M/s. Margadarsi Chit Fund Private Limited and others**², wherein it was held as under:

“The law is well settled otherwise i.e., that the decree-holder has an option to proceed against either the principal debtor or any of the guarantors or against all of them. There need to be no interpretative pains, to arrive at the conclusion that the liability of a surety is co-extensive with that of the principal debtor, as Section 128 of the Indian Contract Act is clearly worded. It says that the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.”

² 2017 (3) ALT (DB) 81 = 2017 (3) ALD 387 = 2017 (2) HLT 106.

9. Further, in **Shriram Chits Private Limited vs. Manuri Ravi and others**³ which is rendered by this Court, at para-No.3 referred the Judgment of this Court's Division Bench in Chalapathi Chit Fund Private Limited, Guntur vs. Adusumalli Malleswara Rao and three others (CRP No.2980 of 2009) held as under:

“In the above Division Bench Judgment of this Court, after a review of the entire case law, their Lordships held that where judgment-debtors suffered a joint and several decree, the decree-holder is at liberty to recover the money against any one of the judgment-debtors and further held that the decree-holder has the liberty to file an execution petition against one or the other judgment-debtors.”

10. The learned counsel for revision-petitioner also placed reliance on the proposition of law laid down in **M.Rama Rao vs. M/s. Shriram City Union Finance Limited**⁴ wherein this Court held at para No.7 as under:

“In view of the law laid by this Court coupled with Section 128 of the Indian Contract Act, it is clear that it is for the decree-holder to proceed against the principal borrower or surety/guarantor. The decree-holder can proceed to recover

³ CRP No.6499 of 2016, dated 30.08.2016 on the file of High Court of Judicature, For the State of Telangana and For the State of Andhra Pradesh at Hyderabad.

⁴ 2014 (6) ALT (DB) 69 = 2015 (2) ALD 166.

the amount in accordance with law against principal borrower or guarantor or both simultaneously.”

11. In **Jaichand T.Gangwal** case (supra) the judgement debtor specifically pleaded that substantial amount has been recovered from the 2nd respondent and unless the relief is claimed against all, the Court would not be able to determine the dispute, effectively. In that context it was held that if the E.P. is not filed against all the judgment debtors, the one, who is sought to be proceeded against, does not have the facility or opportunity to elicit the information as to whether any amount covered by the decree has been paid or there is any collusion between the decree holder on the one hand and the other judgment debtors on the other.

12. Section 128 of the Indian Contract Act, 1872, on Surety's liability says that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. Therefore, a surety cannot stop execution of the decree against him until the creditor has exhausted his remedy against the principal debtor. The surety does not have a right to dictate terms to the creditor as how he should pursue his remedies against the principal debtor.

13. The Hon'ble Apex Court in **Ram Kishun and Ors. vs. State of Uttar Pradesh and Ors.**,⁵ on the question whether a guarantor can restrain execution of the decree against him until creditor exhausted his remedy against principal debtor, held as under

*"[5] We have considered the rival submissions made by Learned Counsel for the parties and perused the record. There can be no dispute to the settled legal proposition of law that in view of the provisions of Section 128 of the Indian Contract Act, 1872 (hereinafter called the 'Contract Act'), the liability of the guarantor/surety is co-extensive with that of the debtor. Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as how he should make the recovery and pursue his remedies against the principal debtor at his instance. (Vide: **The Bank of Bihar Ltd. v. Dr. Damodar Prasad and Anr.**,⁶ **Maharashtra State Electricity Board, Bombay v. The Official Liquidator, High Court, Ernakulam and Anr.**,⁷ **Union Bank of India v. Manku***

⁵ 2012 (11) SCC 511.

⁶ 1969 AIR (SC) 297.

⁷ 1982 AIR (SC) 1497.

Narayana⁸ and State Bank of India v. Messrs. Indexport Registered and Ors.⁹

[6] In State Bank of India v. Saksaria Sugar Mills Ltd. and Ors.,¹⁰ this Court while considering the provisions of Section 128 of the Contract Act held that liability of a surety is immediate and is not deferred until the creditor exhausts his remedies against the principal debtor. (See also: Industrial Investment Bank of India Ltd. v. Biswasnath Jhunjhunwala¹¹; and United Bank of India v. Satyawati Tondon and Ors.,¹² “

14. Admittedly, no evidence was placed by the JDr No.2 before the Trial Court that despite amount had already been paid by the principal debtor, the revision petitioner/decreed holder filed the execution petition for wrongful gain or any of the other judgment-debtors paid the decree amount in full or part. Therefore, the contention of the JDr No.2 that decreed holder must implead the other judgment-debtors is not tenable in law.

15. Hence, respondent/judgment-debtor No.2, who suffered a joint and several decree, cannot stop execution of the decree against her until the creditor has exhausted his remedy against the principal debtor or other JDr's. Hence, she does not have a

⁸ 1987 AIR (SC) 1078.

⁹ 1992 AIR (SC) 1740.

¹⁰ 1986 AIR (SC) 868.

¹¹ 2009 9 SCC 478.

¹² 2010 AIR (SC) 3413.

right to dictate terms to the decree holder as how he should pursue his remedies.

16. Therefore, the Trial Court failed to appreciate the facts and law in a proper perspective. The trail Court had mis-directed itself on facts and law. Hence, committed material irregularity.

17. In that view of the matter, the order of the trail Court is labile to be set-aside.

18. In the result, the Civil Revision Petition is 'Allowed' and the Order, dated 21.11.2014 passed in E.P.No.71 of 2013 in O.S.No.449 of 2008 by the Principal Senior Civil Judge, Tirupati is 'set-aside'. The learned Principal Senior Civil Judge, Tirupati is directed to proceed with E.P.No.71 of 2013 in O.S.No.449 of 2008 and dispose of the same in accordance with law. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

B.V.L.N.CHAKRAVARTHI, J

18th April 2023.

DNB