



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TENTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 1840 OF 2016

Between:

1. B SATYANARAYANA, E.G.DIST S/o. Dubaraju, Hindu, aged 45 years,
Occ: Cultivation, R/o. Adurru Village, Mamidikuduru Mandal,
East Godavari District.

...PETITIONER(S)

AND:

1. SIDDANTAPUR SATYASAI BABU, E.G.DIST S/o. Ramarao, Hindu, aged
50 years, Occ: Teacher,
R/o. Adurru Village, Mamidikuduru Mandal,
East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): RAMBABU KOPPINEEDI

Counsel for the Respondents:

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.1840 OF 2016

Between:

Bandaru Satyanarayana, S/o. Dubaraju, Hindu, 45 years,
Cultivation, R/o. Adurru village, Mamidikuduru Mandal,
East Godavari District.

... Petitioner/Plaintiff

Versus

Siddantapu Satyasai Babu, S/o. Ramarao, Hindu, 50 years,
Teacher, R/o. Adurru village, Mamidikuduru Mandal, East
Godavari District.

...Respondent/Defendant

* * * * *

DATE OF ORDER PRONOUNCED : 10.05.2023

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.1840 OF 2016

% 10.05.2023

Between:

Bandaru Satyanarayana, S/o. Dubaraju, Hindu, 45 years,
Cultivation, R/o. Adurru village, Mamidikuduru Mandal,
East Godavari District.

... Petitioner/Plaintiff

Versus

Siddantapu Satyasai Babu, S/o. Ramarao, Hindu, 50 years,
Teacher, R/o. Adurru village, Mamidikuduru Mandal, East
Godavari District.

...Respondent/Defendant

! Counsel for the Revision

-petitioner/plaintiff : Sri Rambabu Koppineedi

^ Counsel for the

Respondent/Defendant : Notice Served, none appeared

< Gist:

> Head Note:

? Cases referred:

1. 1997 (6) ALT 762.

This Court made the following:



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

CIVIL REVISION PETITION NO.1840 of 2016

O R D E R:

Heard the learned counsel for the revision-petitioner. None appeared for the respondent though notice served.

2. Learned counsel for the revision-petitioner would submit that this revision-petition is directed against the Order, dated 08.02.2016 in E.P.No.36 of 2015 in O.S.No.118 of 2011 on the file of Senior Civil Judge's Court, Razole, whereunder the Trial Judge observed that the decree-holder has to recover the remaining amount due under the decree by filing execution petition under Order XXI Rule 48 of the Code of Civil Procedure, 1908 (for brevity 'CPC') after a gap of twelve (12) months, though, earlier under the same decree, the salary was attached continuously for a period of twenty four (24) months, and accordingly, dismissed the execution petition filed by the revision-petitioner under Order XXI Rule 37 of CPC.

3. Learned counsel would submit that in view of Section 60 (i) of CPC, the decree-holder cannot file execution petition under Order XXI Rule 48 of CPC for attachment of salary of the judgment-debtor after it was attached continuously for a period



of twenty-four (24) months earlier and therefore, the Trial Court committed material irregularity.

4. He would further submit that the decree-holder can choose his own mode of execution as per Section 51 of CPC and in that view of the matter also, the Order of the Trial Court is not valid in law.

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

“Whether the Execution Court committed any material irregularity in the Order, dated 08.02.2016 passed in E.P.No.36 of 2015 in O.S.No.118 of 2011?”

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

It is an admitted fact that the revision-petitioner earlier filed E.P.No.25 of 2012 under Order XXI Rule 48 of CPC and salary of the respondent/judgment-debtor was attached continuously for a period of twenty-four (24) months and a sum of Rs.1,48,990/- was recovered in the said execution petition. The remaining amount due under the decree is Rs.1,10,228/-. Hence, the revision-petitioner filed another execution petition i.e., E.P.No.36 of 2015 under Order XXI Rule 22 and 37 of CPC to



detain the judgment-debtor in civil prison, alleging that the respondent/judgment-debtor did not repay the balance amount to defeat the decree, though he is having/had means to discharge the decree amount.

7. The judgment-debtor before the Trial Court opposed the execution petition on the ground that the matter was settled for a sum of Rs.1,25,000/-.

8. Admittedly, the judgment-debtor is a salaried employee, and he is having salary income. The learned Trial Judge did not decide the issue i.e., whether judgement debtor has means to discharge the balance amount due under the decree? If so, whether he is not discharging the same with a malafide intention to defeat the decree? Learned Trial judge did not consider the truth and validity of the plea of judgement debtor stated supra.

9. In the impugned Order Trial Court held that the decree-holder to recover the remaining amount due under the decree, after a gap of twelve (12) months, he can file another execution petition under Order XXI Rule 48 of CPC and dismissed the present execution petition. This is not defence of the judgement debtor. Therefore, the learned trial judge instead of deciding the issue in the case misdirected himself and erroneously dismissed



the petition, ignoring the statutory law and established legal principles on this subject.

10. Section 60 Clause (i) of CPC reads as under:

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

(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.

11. In **Raghavarapu Nageswara Rao vs. Tenneti Venkata Lakshmi Narayana**¹ this Court at para-No.5 observed as under:

¹ 1997 (6) ALT 762.



“Thus, the second limb of the proviso to clause (i) is crystal-clear in saying that the salary which was under attachment in execution of one and the same decree for a continuous period of 24 months will be finally exempt from attachment thereafter in execution of the very same decree. In other words, after attaching the salary of a particular Judgment-debtor for 24 months, the executing Court cannot again order the salary disbursing officer of the employer under whom the judgment-debtor is working either to withhold any part of the salary of the Judgment-debtor or to remit the same in discharge of the very same decretal debt (under Order XXI Rule 48-A C.P.C.). The above is based on a public policy which was evolved so as to safeguard the interest of the judgment-debtors and to relieve them from the burden of continuous attachment of their take-home salary. This is exactly what was laid down in the decision of the Calcutta High Court. But, an exemption of a particular property under the provisions of Section 60 of the Code cannot be understood to mean that the rights of a decree-holder to execute and realize the decretal debt stands automatically extinguished and the judgment-debtor’s liability to pay the remaining decretal debt abruptly comes to a grinding halt. In fact, it is never the intention of the Code. When once a debt is contracted, the debtor is bound to repay the same with interest and he is bound to repay even the last pie of the debt



and till then it cannot be said that the debt is discharged. Till such time the entire decretal debt is realized, the decree-holder is entitled to execute the decree through the process of the Court. Section 51 is introduced for this purpose only. As already observed, Section 51 indicated certain modes for execution of a decree and the decree-holder is free to choose any one of those modes. If the decree could not be executed for one reason or the other through one of the modes that is chosen by the decree-holder, he is entitled to proceed against the judgment-debtor through the other modes that are available to him under law.”

12. It is an admitted fact that the revision-petitioner/decreeholder earlier filed E.P.No.25 of 2012 under Order XXI Rule 48 of CPC for attachment of salary and the trial Court ordered attachment of salary of judgement debtor, and in pursuance of the said order, attachment was in force for a period of twenty-four (24) months.

13. As per Section 60 (i) of CPC, where attachment has been made in execution of a 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.



14. The decree-holder is entitled to file application to execute the decree through the process of the Court, till the entire decretal debt is realized. Section 51 of CPC lays down certain modes for execution of a decree and the decree-holder is free to choose any one of those modes. If the decree could not be executed for one reason or the other through one of the modes chosen by the decree-holder, he can proceed against the judgment-debtor through the other modes available to him under law.

15. In the light of above legal position, the Execution Court ought to have conducted enquiry under Order XXI Rule 37 and 38 of CPC. Unfortunately, the learned Trial Judge acted illegally in exercise of the jurisdiction so vested and dismissed the execution petition erroneously.

16. In the light of the above discussion, the Civil Revision Petition is 'Allowed' and the Order of the Execution Court is set-aside. The matter is remitted back to the Execution Court with a direction to conduct an enquiry, and pass appropriate orders in accordance with law, without being influenced by the observations made in this order. The Trial Court is directed to dispose of the execution petition expeditiously, preferably within



a period of three (03) months, from the date of receipt of this order. 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

10th May, 2023.

Note:

LR Copy is to be marked.

B/o.
DNB