APHC010440572024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3332]**
(Special Original Jurisdiction)

WEDNESDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

<u>CIVIL REVISION PETITION NO: 2296/2024</u>

Between:

1. Mekathoti Yesupadam @ Seshu Babu, S/o. Yesu Ratnam, Aged 59 years, Court Employee (Retd.), Ameena, X-addl. District Court, Gurajala, R/o.D.no. 1-833, Ajay Nagar, 23rd ward, Mangalagiri town, Guntur district.

...PETITIONER

AND

1. Tamada Ratna Kumari, W/o. Govinda Raju Aged 48 Years, R/o. Kovelamudi Village, Vatticherukuri Mandal, Guntur District, Guntur D.M.C., Andhra Pradesh.

...RESPONDENT

Petition under Article 227 of the Constitution of India praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to set aside the impugned order dated 09.09.2024 in E.P.No.15 of 2024 in O.S. No. 282 of 2018, on the file of Civil Judge (Senior Division), Gurajala, thereby allow the Civil Revision Petition and pass

<u>IA NO: 1 OF 2024</u>

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 pass orders by grating the stay of the operation of the execution of order dated: 09.09.2024 in E.P.No.15/2024 in O.S.No.282 of 2018 on the file of Hon’ble Civil Judge (Senior Division), Gurajala, Guntur District, pending disposal of the main revision petition and pass

Counsel for the Petitioner:

1. B PRAKASAM

Counsel for the Respondent:

1. VENKATA DURGA RAO ANANTHA

The Court made the following order:

The present civil revision petition is filed by the petitioner assailing the correctness and legality of the orders dated 09.09.2024 in E.P.No.15 of 2024 on the file of learned Civil Judge (Senior Division), Gurajala in O.S.No.282/2018 on the file of the Court of the learned IV Additional Senior Civil Judge, Guntur.

2. The brief facts of the case that led to filing of this revision are as follows:

(a) The petitioner is the J.Dr/defendant in O.S.No.282/2018 and the respondent is the D.Hr/Plaintiff. The respondent filed O.S.No.282/2018 for recovery of money basing on the promissory notes. The said suit was decreed under its order dated 13.07.2023 for realization of the amount. The respondent/D.Hr filed E.P.No.15 of 2024 under Order 21 Rule 52 of CPC, 1908 seeking attachment of the retirement benefits of the petitioner/J.Dr through his Garnishee for recovery of decretal amount. Opposing the said application, the petitioner/J.Dr filed counter contending that the said application is not maintainable since the J.Dr has retired from service and that retirement benefits cannot be attached. After hearing both the parties, the court below allowed the said E.P. making the attachment absolute and accordingly directed to serve attach warrant to the Garnishee and further directed to communicate the same through a letter to the Garnishee and an amount of Rs.15,00,000/- is ordered to be sent to the credit of the suit. Assailing the said order, the J.Dr/petitioner filed the present civil revision petition.

3. Heard Sri B.Prakasam, learned counsel for the petitioner and Sri Bulla Samba Siva Rao, learned counsel representing learned counsel for the respondent.

4. Learned counsel for the petitioner in elaboration to what has been stated in the grounds of revision and the contents of the counter affidavit filed in the E.P., would contend that, D.Hr simply filed the E.P., seeking attachment of retirement benefits of the petitioner but did not specifically mentioned about the head of that retirement benefits. He further submitted that, under Section 60 (g),(k),(ka),(Kb),(l),(n) and (o) of CPC, 1908, the gratuity, provident fund, leave salary and life insurance policy cannot be attached. Despite raising the said grounds in the counter, the court below, basing on assumptions and presumptions, has erroneously came to a conclusion that, leave salary/earned leave is attachable under section 60 of CPC. If the said order of attachment in the E.P. is proceeded further and the retirements benefits of the petitioner are attached, the petitioner would be put to suffer irreparable loss and hardship. As such prayed to set aside the impugned order by allowing the revision petition.

5. On the other hand, learned counsel for the respondent submitted that, the court below has rightly passed orders in the Execution petition by duly taking into consideration the law and facts on hand and since the petitioner did not raise any

valid grounds, prayed to dismiss the revision. In support of his contentions, he relied on the judgment made in CRP.No.4498/2018.

6. Perused the record and considered the submissions of both the learned counsel.

7. To appreciate the facts of the case, the relevant clauses in Section 60 of the CPC is extracted here 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, movable 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 another 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;
(b) xxx
(c) xxx
(d) xxx
(e) xxx ;
(f) xxx ;
(g) stipends and gratuities allowed to pensioners of the Government [or of a local authority or of any other employer], or payable out of any service family pension fund notified in the Official Gazette by [the Central Government or the State Government] in this behalf, and political pensions;
(h) xxx
(i) xxx
(j) xxx
(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 14[1925], (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment; 15

(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(kc) xxx

(l) any allowance forming part of the emoluments of any [servant of the Government] or of any servant of a railway company or local authority which the [appropriate Government] may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to [any such servant] while under suspension;]

(m) xxx"
(n) a right to future maintenance;
(o) any allowance declared by [any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and
Xxxxxxx"

8. A bare reading of the above provisions would indicate that stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government cannot be attached in execution of a sale. The Apex Court has also held that pension and gratuity amounts, even it converted into fixed deposits, cannot be attached for the satisfaction of a court decree, reinforcing the need to identify them as such.

9. A perusal of the record would show that the DHr filed the E.P. under Order 21 Rule 52 seeking attachment of retirement benefits of the petitioner but did not specifically mentioned about the head of that retirement benefits. Also, the court below has allowed the said E.P. without mentioning the specific head of retirement benefits.

10. In the judgment relied by the learned counsel for the respondent in CRP.No.4498/2018, the Executing court had directed for attachment under the head of leave encashment, arrears of salary and pension commutation but in the present case, there is no mention about the particular head of retirement benefits, as such, the said judgment is not applicable to the facts of the case on hand.

11. In view of the facts and circumstances of the case, this court deems it fit to allow the revision.

Accordingly, CRP is ***allowed*** setting the orders dated 09.09.2024 in E.P.No.15 of 2024 on the file of learned Civil Judge (Senior Division), Gurajala in O.S.No.282/2018 on the file of the Court of the learned IV Additional Senior Civil Judge, Guntur and the matter is remitted back to the court below for fresh adjudication to satisfy itself about the particular head of the retirement benefits that is sought to be attached after hearing both the parties. No costs.

Miscellaneous applications, pending if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

BRS