

(2003) 07 AP CK 0049
In the Andhra Pradesh High Court
Case No : CRP No. 2967 of 2003

Ch. Venkateswara Rao and Others	APPELLANT
Vs	
Margadarshi Chit Funds Limited and Another	RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22

Citation : (2003) 5 ALD 131 : (2003) 2 AnWR 191 : (2003) 3 APLJ 170

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Ugra Narasimha, for Jayanti S.C. Sekhar, for the Appellant; Raja Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The Civil Revision Petition has been coming up for admission.

2. Heard Sri Ugra Narasimha, Counsel representing Sri Jayanthi S.C. Sekhar and Sri Raja Rao, Counsel representing the 1st respondent.

3. The Civil Revision Petition is filed by the Revision petitioners aggrieved by an order dated 7-4-2003 passed in E.P. No. 177/ 2002 in O.S.No. 262/2000 on the file of Principal Junior Civil Judge, Vizianagaram. The E.P. is filed for attachment of salaries of judgment-debtors 1 to 4. The said judgment-debtors filed counter stating that the principal debtor is working as a Security guard and is drawing a salary of Rs. 10,280/- per month and the decree holder can proceed against the said principal-debtor/judgment debtor No. 1 and hence the E.P. is not maintainable against the rest of the judgment-debtors, Judgment debtor Nos. 2 to 4. The learned Principal Junior Civil Judge, Vizianagaram had negated the stand taken by the judgment-debtor Nos. 2 to 4 and had ultimately allowed the E.P. and attached the salaries of not only the judgment-debtor No. 1, but also the other judgment-debtor Nos. 2 to 4. Aggrieved by the same, judgment-debtor Nos. 2 to 4 in the aforesaid E.P. had preferred the present Civil Revision Petition.

4. Sri Ugra Narasimha, the learned Counsel representing the petitioners had placed strong reliance on *K.S.R. Murthy v. S.R. Chit Funds Pvt. Ltd. and Anr.* 2001 (3) LS 453, and had contended that when once the decree holder had initiated the E.P. against the principal-debtor it is not open to him to simultaneously proceed against the guarantors also. The learned Counsel also had pointed out that though this decision was brought to the notice of the learned Principal Junior Civil Judge, Vizianagaram, the learned Judge however proceeded to make such an order placing reliance on an unreported decision in *Margadarsi Chit Fund Limited, Guntur v. Mrs. Nallapu Sarojini Devi*, CRP No. 5271/ 2002, dated 27-12-2002.

5. Per contra Sri Raja Rao, the learned Counsel representing the 1st respondent/ decree holder had taken me through the impugned order and also the observations made in the decision referred supra. The learned Counsel also had drawn my attention to another decision of this Court in *Margadarsi Chit Fund Limited, Anantapur v. K. Veera Sekhar*, CRP No. 1710/2002, dated 14-2-2003. While concluding, the learned Counsel submitted that in the light of the authoritative pronouncement made by the Division Bench in *Bethia Venkanna v. Sait Chunilal Moolchand* AIR 1961 A.P. 69 (DB), there is no need to have any clarification of the judgment referred supra at all by this Court.

6. Heard both the Counsel and also perused the impugned order.

7. The sole question which had been raised and argued elaborately by the revision petitioners is that when once the decree holder proceeds in execution as against the principal-debtor, simultaneously he cannot proceed against the guarantors as well. It is needless to say that when once a decree is made, all the judgment-debtors will be jointly and severally liable. A distinction cannot be drawn as between the principal-debtor or a guarantor unless such directions are there incorporated in the decree itself. A Division Bench of this Court in the decision referred supra while dealing with simultaneous execution against different judgment-debtors for realisation of amount held:

"A decree-holder is entitled under law to proceed simultaneously against different judgment-debtors for the same amount in execution of his decree and the specific permission of the Court is not required for such a course. There is nothing in the CPC or in any other law which lays down positively that several applications for execution of a decree cannot be filed simultaneously."

The same view was expressed by two other learned Single Judges of this Court in the decisions referred supra. It is no doubt true that yet another learned Judge in the decision referred (supra) had observed that once the decree holder initiates execution proceedings against the principal-debtor, it is not open to him simultaneously to proceed against the guarantors also. However, in view of the decision of the Division Bench referred supra, this view taken by the learned Single Judge cannot be sustained in the light of the aforesaid binding decision.

In fact, as referred to supra, the same view was expressed by the other learned

Judges in the decisions referred supra. In the light of the fact that the decision of a Division Bench is available, I do not see any reason to refer the matter to a Division Bench for clarification. Except this point, no other contentions had been advanced by the respective Counsel for the parties.

8. For the foregoing reasons, the Civil Revision Petition is devoid of merits and accordingly the same is dismissed. No order as to costs.