

(2008) 06 AP CK 0017
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2104 of 2008

Janapati Jaipal Reddy

APPELLANT

Vs

Sannihita Chit Funds Pvt. Limited and Others

RESPONDENT

Date of Decision : 19-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 3, Order 21 Rule 48, Order 21 Rule 48(1), 39, 39(1)
Companies Act, 1956 — Section 60, 617

Citation : (2008) 4 ALD 735 : (2008) 5 ALT 17

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Vedula Srinivas, for the Appellant;

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This Civil Revision Petition has been filed against the order in E.P. No. 116 of 2007 in O.S. No. 58 of 2002 on the file of the Senior Civil Judge, Karimnagar District.

2. The plaintiff filed the suit for recovery of money and it was decreed for an amount of Rs. 2,87,471/- with interest. The decree holder filed E.P. No. 116 of 2007 in the same Court which passed the decree for realization of Rs. 4,92,059/- towards the amount covered by the decree with interest and costs by way of attachment of the salary of the petitioner. The revision petitioner being J.Dr. in the said E.P. challenged the order on the ground that the E.P. is not maintainable as he is working in Adilabad District, which is beyond the jurisdiction of the Karimnagar Court and the execution proceedings ought to have been taken only after the transfer of the decree in the local Court of Adilabad District, therefore, he requested to set aside the order passed by the Senior Civil Judge, Karimnagar, in E.P. No. 116 of 2007 in O.S. No. 58 of 2002.

3. The learned Counsel for the respondent - decree-holder submitted that there is no need for transfer of the case to the District in which the J.Dr. is working for

the purpose of attachment of the salary and the lower Court was right in ordering attachment of the salary, as the said Court has got jurisdiction to entertain the E.P. and to order attachment of the salary.

4. The learned Counsel for the revision petitioner submits that u/s 39 of the Code of Civil Procedure, the decree has to be transferred to another Court of competent jurisdiction for execution of the decree, but Clause (1) indicates that on the application of the decree-holder, the transfer has to be made. Under Clause (2) the Court which passed the decree may on its own motion send it for execution to any subordinate Court of competent jurisdiction. Clause (1) indicates that the decree has to be sent to the Court which has jurisdiction within the local limits in which the J.Dr. voluntarily resides or carries on business, or the Court within the local jurisdiction of which the properties of the J.Dr. is situated, or if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed the decree, or the Court which passed the decree considers for any other reason the decree should be executed by the other Court.

5. Section 39 of the CPC reads as follows:

Section 39. The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,--

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorize the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

6. Order XXI Rule 48 deals with attachment of salary and it reads as follows:

R.48.(1) Where the property to be attached is the salary of allowances of a servant of the Government or of a servant of a railway company or local authority, or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in Section 617 of the Companies Act, (1 of 1956), the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in one payment or by monthly installments as the Court may direct and, upon notice of the order to such officer as the appropriate Government may by notification in the Official Gazette, appoint in his behalf,--

(a) Where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly installments, as the case may be

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly installments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the appropriate Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of Sub-rule (2), shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or Corporation or Government Company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or Corporation or Government Company in India and the appropriate Government or the railway company or local authority or Corporation or Government Company, as the case may be, shall be liable for any sum paid in contravention of this rule. Explanation.-In this rule, "appropriate Government" means,--

(i) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port

authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government Company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government

(ii) as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a provincial or State Act, or a servant of any other Government Company, the State Government.

7. In Sub-clause (1) it was mentioned that the Court whether the "Judgment Debtor or the Disbursing Officer is or is not within the local limits of the Court's jurisdiction", may order that the amount shall subject to the provisions of Section 60, be withheld from such salary by sending notice to such officer as the appropriate Government may by notification in the Official Gazette appoint in his behalf.

8. The learned Counsel stressed on the wording "the officer authorized by the appropriate Government" has to implement the order by deducting the amount from the salary of the J.Dr. and as there is no mention by the decree holder as to whether the Officer to whom the Court send the attachment warrant has been authorized by the Government or not, in the absence of such material, the order becomes illegal, but after reading Order XXI Sub-Rule (1) of Rule 48, it is very clear that so far as the attachment of the salary is concerned, the Court which passed the decree may also order attachment of the salary of the J.Dr. who is working outside the jurisdiction of that Court also. The Court can order attachment where the J.Dr. or Disbursing Officer is or is not within the local limits of the jurisdiction. Order XXI Rule 48 is the appropriate Rule that has to be applied in the present case. The explanation of this Rule clarifies what is the "appropriate Government". Unless and otherwise ordered by the Government, the Disbursing Officer is the competent person to attach the salary. Section 39 has no application in respect of E.P. filed for attachment of the salary.

9. In Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), the Supreme Court made the position clear by observing that Order XXI Rule 48 would not be effected by Section 39(4) of the Code. The observations of the Supreme Court in paras 23 to 25 are as follows:

23. Section 39(1) of the Code provides that the Court which passed a decree may, on the application of the decree-holder send it for execution to another court of competent jurisdiction. By Act 22 of 2002, Section 39(4) has been inserted providing that nothing in the section shall be deemed to authorize the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction. The question is whether this newly added provision prohibits the executing court from executing a decree

against a person or property outside its jurisdiction and whether this provision overrides Order XXI Rule 3 and Order XXI Rule 48 or whether these provisions continue to be an exception to Section 39(4) as was the legal position before the amendment.

24. Order XXI Rule 3 provides that where Immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more courts, any one of such courts may attach and sell the entire estate or tenure. Likewise, under Order XXI Rule 48, attachment of salary of a Government servant, Railway servant or servant of local authority can be made by the court whether the judgment-debtor or the disbursing officer is or is not within the local limits of the court's jurisdiction.

25. Section 39(4) does not authorize the Court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance of conditions stipulated in those provisions. Thus, the provisions, such as, Order XXI Rule 3 or Order XXI Rule 48 which provide differently, would not be effected by Section 39(4) of the Code.

10. I, therefore, do not find any force in the contention of the learned Counsel for the revision petitioner, as there is no need to transfer the decree to the local jurisdiction of the Court in which the J.Dr. is working for the purpose of attachment of the salary.

11. The Civil Revision Petition is accordingly dismissed. No order as to costs.