(1999) 06 AP CK 0042

In the Andhra Pradesh High Court

Case No : CRP No. 2206 of 1998

Modugula Panduranga Vittal (died) and Another — APPELLANT

Vs

Sri Venkataraya Chit Funds (P) Ltd. and others — RESPONDENT

Date of Decision : 30-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 60(1)
Constitution of India, 1950 — Article 12

Citation : (1999) 4 ALD 382 : (1999) 4 ALT 350 : (1999) 2 APLJ 231

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. Prattipati Venkateshwarlu, for the Appellant; Mr. M.V. Dogra Prasad, for the Respondent

Judgement

1. This revision petition is filed being aggrieved by the order dated 16-4-1998 passed by the Senior Civil Judge, Tanuku in EP No.25 of 1998 in OS No.42 of 1997.

2. By the impugned order, the Court below has directed the attachment of property of Judgment Debtor Nos.2 and 3 who are the petitioners herein. It appears that the Court below also passed a separate decree stating that a sum of Rs.400/- is exempted from attachment out of the salary and remaining l/3rd shall be recovered in every month etc. The fact also remains that after receiving notices, Petitioner Nos.l and 2 did not appear before the Court on 16-4-1998 and accordingly, (he Court below passed the order.

3. During the pendency of this revision petition, Petitioner No. 1 - Modugula Panduranga Vittal has died and his I.Rs are not brought on record. Vide order of this Court dated 5-4-1999, the CRP is dismissed as abated in so far the petition relates to petitioner No. 1

4. The learned Counsel appearing for the petitioner contended that the 2nd Petitioner is an employee in Oriental Insurance Company Limited in West

Godavari District and his salary is exempt from the attachment u/s 60 of Code of Civil Procedure, therefore, the Court below has erred in attaching the salary of the 2nd Petitioner. On the oilier hand, the learned Counsel appearing for the 1st Respondent/Decree Holder supported the impugned order and submitted that there are no merits in the revision petition and accordingly, the same is liable to be dismissed.

5. In support of the contention, the Counsel appearing for the petitioner submitted that in view of the judgment of this Court in Ramadasu Krishna Murthy Vs. Katla Vijayalaxmi and Others, , the salary of the petitioner could not have been attached. On the other hand, the learned Counsel for Respondent No.1 contended that unless the establishment in which the employee is working is exempted from application of Section 60 of Code of Civil Procedure, his salary is liable to be attached to the extent provided under the said section. In support of her contention, she relied upon judgments of Kerala High Court in Bharata Bankers Vs. E. Rajendra, , and in Bharata Bankers v. Rajendran, 1984 KLT 335. It is also brought to my notice the judgment of this Court in N. Venugopala Rao Vs. Life Insurance Corporation of India, .

6. Having regard to the arguments addressed on both sides, now, I have to see, whether the impugned order calls for interference by this Court u/s 115 of Code of Civil Procedure.

7. It is not in dispute that Petitioner No.2 - Sri Mongara Satish Kumar is a person employed in Oriental Insurance Company Limited, Tanuku. Therefore, the short question would be, whether the salary of Petitioner No.2 is exempt from attachment u/s 60(1) Proviso, Clause (I) of Code of Civil Procedure.

8. It is no doubt true that under said Proviso, Clause (1) of Section 60(1) of CPC, if there is a notification exempting any allowance forming part of the emoluments of any servant of the Government or of any servant of a Railway company or any other local authority, would stand exempted. In other words, such exemption would be to the extent provided in that notification. In the instant case, no such notification has been brought to my notice exempting the salary and allowances of the servants working in the Life Insurance Corporation in terms of Proviso, Clause (1) of Section 60(1) of CPC. Therefore, prima-facie, the contention of petitioner for total exemption could not be acceptable.

9. Now, the other question would be, whether any notification applicable to the Government servants would apply to Petitioner No.2 who is an employee under L.I.C.

10. It has been held by the High Court of Kerala in the decisions Ms. Bharata Bankers v. E. Rajendra and 1984 KLT 335 referred (supra) that the notification, if any, applicable to the Government servants, would not apply to the salaries pertaining to the employees of Nationalised Banks, unless there is a special notification regarding the employees of Nationalised Banks. The Division Bench of this Court in the decision N. Venugopala Rao v. LIC, referred (supra), has ruled

as under:

"6. We are not inclined to accept the submissions of the teamed Counsel for the appellant. Section 60 of the CPC deals with the property liable to attachment and sale in execution of the decree. Clause (1) of sub-section (1) of Section 60 speaks of situations in which attachment is exempt:

"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 ly 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".

The benefit of the aforesaid provisions does not apply to the appellant herein for the obvious reason that it does not govern employees of the L!C. It applies to only Government servants, servants of a railway company or local authority. The Life Insurance Corporation being a statutory Corporation, its employees have no right to avail of the said benefit. This position has not been disputed by the learned Counsel for the appellant. Every authority of the ''State'' within the meaning of the Article 12 of the Constitution of India is not governed by Section 60(1)(i) of the Civil Procedure Code".

From the above law declared by this Court it is clear that the notification, if any, applicable to the Government servants, would not be applicable to the employees working in the 1,IC and thus, the matter squarely stands covered by the Division Bench judgment of this Court. In other words, whatever the benefit is conferred by Section 60(1) Proviso, Clause (i) of CPC would be applicable, in the sense that after excluding first Rs.400/-, 2/3rd of the remainder would stand exempted, in execution of a decree other than a decree for maintenance. To the same effect also is the judgment of this Court referred to Ramdasu Krishna Murthy v. Vijayalakshmi and others (supra). From the reading of impugned order, I find that precisely this calculation has been done by the Court below in terms of Section 60(1) Proviso, Clause (i) of the Civil Procedure Code. From this, it follows that the impugned order does not call for any interference by this Court. Accordingly, I pass the order as under:

11. The revision petition is dismissed, but in the circumstances, without costs.

