

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.145 of 2010 and 5081 of 2008

COMMON ORDER:

Petitioner is the Judgment-Debtor in O.S.No.347 of 2007 on the file of the Principal Senior Civil Judge, Kothagudem.

2. A suit has been filed against him by the 1st respondent for recovery of money on the basis of a promissory note for Rs.3,31,100/- with interest thereon.

3. An *ex parte* decree was passed on 17-03-2008 directing the petitioner to pay Rs.3,37,100/- with interest @ 12% p.a. from the date of filing of suit till date of decree, @ 6% p.a. from the date of decree till date of realization on the principal sum of Rs.3,00,000/-. Costs of Rs.9,304/- were also awarded.

4. Petitioner filed I.A.No.1022 of 2008 under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree. Unfortunately, the said I.A. was also dismissed on 24-10-2008 for default.

5. Petitioner then filed I.A.No.261 of 2009 to restore I.A.No.1022 of 2008.

6. In the meantime, Execution Petition No.133 of 2008 had been filed seeking execution of the decree obtained by 1st respondent by attaching the salary of the petitioner, who is an employee of Singareni Collieries.

7. Petitioner filed E.A.No.328 of 2008 to stay the execution of the said decree till application filed by petitioner to set aside the *ex parte* decree is decided. This E.A. was filed on 18-07-2008. E.A.No.328 of 2008 was dismissed on 08-08-2008 on the ground that it is not maintainable.

8. Challenging the same, C.R.P.No.5081 of 2008 was filed by petitioner.

9. Though notice was ordered to the 1st respondent/Decree Holder in the said Revision, it was returned with endorsement "unclaimed". In view of the settled legal position, notice is deemed to be served on the Decree Holder/1st respondent in C.R.P.No.5081 of 2008.

10. In C.R.P.No.5081 of 2008, on 26-12-2008 this Court in C.R.P.M.P.No.6736 of 2008 granted stay of execution of the decree on condition of petitioner depositing Rs.75,000/- to the credit of the E.P. within six weeks.

11. Petitioner filed C.R.P.M.P.No.1639 of 2009 to modify the said order contending that certain recoveries have been effected from this salary even by the date said order was passed.

12. While the C.R.P.M.P. was pending, on the ground of non-compliance with the interim order dt.26-12-2008 in C.R.P.M.P.No.6736 of 2008 in C.R.P.No.5081 of 2008, I.A.No.261 of 2009 came to be dismissed.

13. However, much prior to the said order, C.R.P.M.P.No.1639 of 2009 was allowed on 18-04-2009 and this Court held that more than Rs.1,00,000/- had already been recovered from the salary of petitioner and directed stoppage of recovery until further orders.

14. Unfortunately, petitioner did not bring this fact to the notice of the Principal Senior Civil Judge, Kothagudem and on an assumption of petitioner had not complied with the order directing deposit of Rs.75,000/- in C.R.P.No.5081 of 2008, the said Judge dismissed I.A.No.261 of 2009. This is questioned by petitioner in C.R.P.No.145 of 2010.

15. Notice was directed to the Decree Holder in C.R.P.No.145 of 2010. Even this notice was returned with endorsement "unclaimed". Therefore it is deemed that the Decree Holder is served in this Revision also.

16. In view of the order dt.18-04-2009 in C.R.P.M.P.No.1639 of 2009 wherein this Court has noticed that the petitioner had already paid Rs.1,00,000/- through recovery from his salary, which is in excess of the sum of Rs.75,000/- directed to be deposited by this Court in its order dt.26-12-2008 and since this fact was not noticed by the Principal Senior Civil Judge, Kothagudem while dismissing I.A.No.269 of 2009 (since it was not brought to his notice), the order dt.06-08-2009 in I.A.No.261 of 2009 in I.A.No.1022 of 2008 in O.S.No.347 of 2007 of the Principal Senior Civil Judge, Kothagudem

is set aside and I.A.No.1022 of 2008 is restored to the file of the said Court. Consequently, C.R.P.No.145 of 2010 is allowed. No costs.

17. Since C.R.P.No.145 of 2010 is allowed and I.A.No.1022 of 2008 is restored to the file of the said Court, there cannot be any execution of the decree passed in O.S.No.347 of 2007 till I.A.No.1022 of 2008 is decided.

18. Therefore, C.R.P.No.5081 of 2008 is also allowed. The Court below is directed to expeditiously decide I.A.No.1022 of 2008 in O.S.No.347 of 2007 within six (06) weeks from the date of receipt of a copy of this order positively. Any amount recovered by the Decree Holder from the petitioner till date will be subject to the result of the said application or if the said application is allowed, the result of the suit. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-10-2016

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