

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CIVIL REVISION PETITION Nos.133 AND 151 OF 2023

% Delivered on: 02-03-2023

C.R.P.No.133 OF 2023

Between:

Prattipati Srinivasa Rao .. Petitioner

Vs.

\$ M/s Shriram City Union Finance Limited
and others .. Respondents

C.R.P.No.151 OF 2023

Between:

Prattipati Venkata Shirisha .. Petitioner

Vs.

\$ M/s Shriram City Union Finance Limited
and others .. Respondents

! For Petitioner : Mr. Nageshwar Rao Pujari,
Lr. Counsel

^ For Respondent No.1. : Mr.N.Srikanth Goud,
Lr. Counsel

< Gist :

> Head Note :

? Cases Referred : -Nil-

THE HONOURABLE SRI JUSTICE K.LAKSHMAN**CIVIL REVISION PETITION NOS.133 AND 151 OF 2023****COMMON ORDER:**

Heard Sri Nageshwar Rao Pujari, learned counsel for the petitioners in both the revisions and Sri N.Srikanth Goud, learned counsel appearing for respondent No.1. Perused the record.

2. Questioning the order dated 24.08.2022 in E.P.No.29 of 2021 in ARB No.180 of 2020 passed by learned V Additional District Judge, at Miryalaguda, the petitioners herein in both the revisions/J.Drs. 2 and 3 therein have filed the aforesaid revisions.

Facts of the case:-

3. On the application filed by 1st respondent, an award dated 06.01.2021 passed in arbitration application vide ARB No.180/2020 under Arbitration and Conciliation Act, 1996 (for short, the Act'), against the petitioners and Smt.Prathipati Shirisha (J.Dr.No.1). They have not filed any application under Section 34 of the Act challenging the said award and it attained finality. Therefore, 1st respondent/Decreeholder had filed an Execution Petition vide E.P.No.29 of 2021 under Section 36 of the Act seeking execution of the said award. Vide order dated 24.08.2022, learned V Additional District

Judge at Miryalaguda has passed an order of attachment of salary of both the petitioners to an extent of Rs.4,10,258/- due to the Decreeholder under the Degree. The learned Judge also required the Drawing Officer i.e. Head Master in ZPHS School at Lingagiri Village, Huzurnagar Mandal, Suryapet District, to withhold the said sum from the salary of the petitioners in 24 monthly instalments and to remit the same to the said Court. Challenging the said order, the petitioners have filed the present revisions.

4. Learned counsel for the petitioners in both the revisions would submit that the petitioners have not filed any application under Section 34 of the Act and however, the 1st respondent/Decreeholder cannot seek execution of the aforesaid award dated 06.01.2021 to recover decree amount of Rs.4,10,258/- each from both the petitioners. It amounts to double the decree amount. The said fact was not considered by the Court below while passing impugned order dated 24.08.2022. Even 1st respondent did not mention the said aspect while filing Execution Petition under Section 36 of the Act. With the said submissions, he sought to set aside both the orders.

5. Whereas, learned counsel appearing for 1st respondent would submit that 1st respondent had filed E.P.No.29 of 2021 under Section

36 of the Act in terms of Order XXI Rule 48 of CPC, wherein there is no provision to seek execution of the award by mentioning the amount proportionately. Therefore, 1st respondent had filed EP in terms of Order XXI rule 48 of CPC. Considering the said fact, the Court below had ordered attachment of salary. However, he fairly submits that necessary orders may be passed considering the provisions of the law to enable 1st respondent to recover the award amount from both the petitioners.

6. There is no dispute that on the application filed by 1st respondent vide ARB No.180/2020, order dated 06.01.2021 was passed by the Arbitrator awarding an amount of Rs.4,10,258/- along with the interest at the rate of 18% from 12.02.2020 to 16.09.2021 on the said amount from the petitioners and J.Dr.1.

7. No application under Section 34 of the Act was filed by the petitioners/J.Drs, challenging the said award and therefore, the said award attained finality. They have also not paid the aforesaid amount. Therefore, 1st respondent had filed Execution Petition vide E.P.No.29 of 2021 under Section 36 read with Order XXI Rule 11(2) of CPC before the V additional District Judge, Miryalaguda, for an amount of Rs.4,10,258/- seeking execution of the aforesaid award. Thus, vide

impugned order, learned Judge, directed the Drawing Officer to withhold an amount of Rs.4,10,258/- each from both the petitioners/J.Drs.2 and 3. If the said amount is recovered, it would be Rs.8,20,516/- which is impermissible. 1st respondent is entitled for only Rs.4,10,258/- i.e. award amount from the petitioners herein/J.Drs, together.

8. It is relevant to note that section 36 of the Act deals with Enforcement of Award and the same is relevant for the purpose of considering the lis in the present revisions and it is extracted below:-

Section 36:-Enforcement. —Where the time for making an application to set aside the arbitral Award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Order XXI Rule 11 (2) of CPC:-

Written application- Save as otherwise provided by sub-rule(1), every application for the execution of a decree shall be in writing, signed and

verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely-

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs (if any) awarded;
- (i) the name of the person against whom execution of the decree is sought; and
- (j) the mode in which the assistance of the Court is required whether-
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require.

Order XXI Rule 48 of CPC

Attachment of salary or allowances of servant of the Government or railway company or local authority.-

(1) Where the property to be attached is the salary or 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, 1956 (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 instalments 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 this 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 instalments, 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 instalments, 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 of 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.]

48A. Attachment of salary or allowances of private employees.-

(1) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provision of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer 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 employer 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 salary or allowances payable out of the funds of an employer in any part of India, and the employer shall be liable for any sum paid in contravention of this rule.]

9. The aforesaid relevant provisions would reveal that for realization of the amount covered under the arbitration award, the 1st respondent has to file an application under Section 36 of the Act and

Order XXI Rule 11(2) of CPC. Accordingly, 1st respondent had filed the aforesaid Execution Petition vide E.P.No.29 of 2021. There is no reference with regard to mode/proportion of the amount to realize from the J.Drs. under Order XXI Rule 48 of CPC.

10. It is also relevant to note that Section 146 of Contract Act, 1872 deals with liability of co-sureties to contribute equally and the same is also relevant and it is extracted below:-

Section 146 of the Contract Act, 1872-Co-sureties liable to contribute equally.

Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

11. Therefore there is no consideration of the aforesaid aspects by the Court below in the impugned salary attachment order dated 24.08.2022.

12. As discussed supra, 1st respondent cannot recover double the awarded amount from the petitioners/J.Drs. and it is entitled for only award amount i.e. Rs.4,10,258/- from the J.Drs. together.

13. It is relevant to note that the learned counsel appearing for 1st respondent fairly admitted that 1st respondent is entitled for only an

amount of Rs.4,10,258/- from the petitioners/J.Drs. as per the aforesaid award dated 06.01.2021 in ARB.No.180/2020. The impugned order dated 29.08.2022 in E.P.No.29 of 2021 in ARB No.180 of 2020 passed by learned V Additional District Judge, at Miryalaguda is liable to be set aside.

14. In view of the aforesaid discussion, both the Civil Revision Petitions are allowed. The impugned order dated 24.08.2022 in E.P.No.29 of 2021 in ARB No.180 of 2020 passed by learned V Additional District Judge, at Miryalaguda is set aside and the matter is remanded back to the learned V Additional District Judge, Miryalagda with a direction to consider the aforesaid aspects and pass orders afresh. Liberty is also granted to 1st respondent to seek recovery of the amount awarded vide award dated 06.01.2021 in ARB.No.180 of 2020 proportionately from the petitioners herein/ J.Drs.2 and 3.

Consequently, miscellaneous Petitions, if any, pending, shall also stand closed.

K. LAKSHMAN, J

Date:02.03.2023

Note: L.R. Copy to be marked.

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