

**THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

**CIVIL REVISION PETITION No. 3401 of 2013**

**ORDER:**

This is a civil revision petition under Section 151 of the Code of Civil Procedure (for short, 'the Code') by the Decree Holder assailing the orders dated 09.07.2013 of the learned Principal Junior Civil Judge, Kothagudem, Khammam District, made in E.A.No.494 of 2012 in E.P.No.103 of 2012 in O.S.No.14 of 2011.

**2.** I have heard the submissions of the learned counsel for both the sides.

**3.** The facts necessary for consideration, in brief, are as follows: "The decree holder having obtained a decree filed the execution petition. The decree holder had in fact filed I.A.No.27 of 2011 before the trial Court and got attached the amounts lying in the bank account of the first judgment debtor. The first judgment debtor had filed a counter and on contest the said petition was dismissed and the attachment was raised. Subsequently, the decree holder filed this Execution Petition and had got attached the same amounts which are lying in the bank account of the judgment debtor. The Court of Execution by detailed orders dated 04.09.2012 made the attachment absolute. Subsequently the garnishee [bank] had received the warrant from the Court of execution on 15.06.2012 and by that date Rs.1,96,373.40ps. was

said to be available in the account of the judgment debtor. However, there existed another attachment pursuant to the warrant of attachment for Rs.1,66,371/- issued by the learned Principal Senior Civil Judge, Kothagudem pursuant to the orders in E.P.No.490 of 2010 in O.S.No.61 of 2010. However, the Court of execution in the present proceedings in E.P.103 of 2012 directed for deposit of Rs.52,250/- vide warrant dated 04.09.2012 and the same was received by garnishee on 17.09.2012 and the same has been complied with by sending a demand draft dated 17.09.2012 for Rs.52,250/- to the Court of execution. However, according to the garnishee, after complying with the attachment warrant for a sum of Rs.1,66,371/- in the other execution proceedings, only a balance of Rs.29,964 was available in the account of judgment debtor, but on a misconception, instead of sending Rs.29,964, the garnishee had sent to the Court of execution a demand draft for Rs.52,250/- though that much of amount was not available in the account of judgment debtor. In the said circumstances, the garnishee had filed an application to pay back to the garnishee Rs.22,280/- from amount of Rs.52,250/- already sent to the Court pursuant to the attachment in the execution proceedings. The said application was resisted by the decree holder as not maintainable and it is inter alia contended in the counter that the garnishee had complied with the directions of the Court of execution and that even assuming for a moment that there was only Rs.29,964/- in the account of judgment debtor, there is no claim by the other decree holder in the other E.P.No.490 of 2010 on the file of Principal Senior Civil Judge, Kothagudem and, therefore, the petition is liable to be dismissed. The second respondent had also

filed a counter and had *inter alia* stated that the second respondent/judgment debtor has no objection to pay back Rs.22,280/- to the petitioner/garnishee. On merits the trial Court had allowed the petition and had directed for issuance of a cheque for Rs.22,280/- to the garnishee, on the garnishee filing a separate application for issuance of a cheque. However, the Court below had directed the garnishee to pay the said amount to the judgment debtor. Aggrieved of the said orders, the present civil revision petition is filed by the decree holder in the instant execution proceedings.”

4. The decree holder had *inter alia* contended in the civil revision petition that the orders of the Court below cannot be sustained under facts and in law and had brought to the notice of this Court, by filing additional material papers, that the judgment debtors/defendants 1 to 5 in O.S.No.61 of 2010 had paid total amount to the other decree holder/plaintiff therein and as per settlement outside the Court full satisfaction was recorded on 04.01.2013 and that pursuant to the full satisfaction report filed by the other decree holder the said E.P.No.490 of 2010 on the file of the Principal Senior Civil Judge, Kothagudem was closed and that no attachment in the other execution proceeding was subsisting and that therefore, there is no need to refund any amount to the garnishee. The learned Counsel appearing for the garnishee bank had submitted that in view of the additional material papers filed in this revision petition and as the other execution petition appears to have been terminated as settled outside the Court, appropriate orders may be passed.

5. I have carefully perused the material record and also the additional material papers. On a careful perusal of the same, the following facts come to the fore. 'The E.P.No.490 of 2010 in O.S.No.61 of 2010 on the file of Principal Senior Civil Judge, Kothagudem was not pressed by the advocate for the decree holder and that in that E.P., full satisfaction memo was filed by the decree holder/plaintiff stating that both the parties have compromised the matter outside the Court and that the D. Hr. had received the amount in the E.P. outside the Court and, therefore, full satisfaction may be recorded in the interests of justice. Accordingly the other E.P. was dismissed as not pressed since settled out side the Court.' From these documents, it is clear that the attachment ordered in E.P.No.490 of 2010 in O.S.No.61 of 2010 on the file of the Principal Senior Civil Judge, Kothagudem is no longer subsisting and that E.P. was dismissed by the said Court of execution on 31.01.2013 as not pressed after advancing the execution petition. As per Rule 55 of Order 21 of the Code, which deals with removal of attachment after satisfaction of the decree, it is clear that where satisfaction of the decree is otherwise made through the Court or certified to the Court, the attachment shall be deemed to be withdrawn. Hence, in view of the settlement of the claim in the other execution petition outside the Court and dismissal of the said E.P., it shall be deemed that the attachment ordered in the said E.P is withdrawn. Therefore, the contention of the garnishee that after the amount that is payable to the decree holder in E.P.No.490 of 2010 in O.S.No.61 of 2010, the balance amount would be Rs.29,964/- and that,

therefore, the garnishee is entitled to be paid back Rs.22,280/- cannot be sustained as that other E.P. was settled outside the Court by payment outside the Court, but not on account of payment made by the garnishee through Court. Hence it follows that the amount lying in the account of judgment debtor which was already sent to the Court of execution by way of demand draft for Rs.52,250/- by the garnishee bank can as well be appropriated towards the decree debt due to the present decree holder in E.P.103 of 2012 on the file of Principal Junior Civil Judge, Kothagudem and can be directed to be paid to the revision petitioner/decree holder in the before mentioned execution proceedings. Therefore, and in view of the facts brought to the notice of this Court, which are undisputed by the garnishee/bank the order under revision calls for interference and is liable to be set aside.

6. In the result, the civil revision petition is allowed and the impugned order is set aside. Miscellaneous petitions, if any, pending shall stand closed.

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**JUSTICE M. SEETHARAMA MURTI**

26<sup>th</sup> February, 2014

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