APHC010453752026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3330]
(Special Original Jurisdiction)

MONDAY, THE 28th DAY OF SEPTEMBER 2026

PRESENT
THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No.2416 of 2026

Between:

1. ATHIKARI SREENIVASULU, S/O. ATHIKARI RAMAIAH, AGED ABOUT 51 YEARS, OCC TEACHER,RESIDING AT AKULAVEEDI STREET, SIDHOUT TOWN MANDAL,YSR KADAPA DISTRICT.

...PETITIONER

AND

1. EEGA CHENNAYYAGARI SANKAR REDDY, S/O. EEGA CHENNAYYAGARI NARASIMHA REDDY, AGED ABOUT 58 YEARS, OCC CIVIL ENGINEER, RESIDING AT MADHAVARAM - I VILLAGE AND POST, SIDHOUT MANDAL, YSR KADAPA DISTRICT.
2. EXECUTIVE ENGINEER, WRO, ANNAMAYYA PROJECT,OPP TO TRAFFIC POLICE STATION, KOTI REDDY CIRCLE, KADAPA CITY,YSR KADAPA DISTRICT.
3. THE DISTRICT TREASURY OFFICER, DISTRICT TREASURY OFFICE,KADAPA CITY, YSR KADAPA DISTRICT

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, for the reasons stated above and that are to be raised at the time of hearing the petitioner herein prays that this Honble court may be pleased to set aside the Order dated 31-07-2026 passed in I.A.No.75 of 2026 in O.S. No. 23 of2025 on the file of the Honble Junior Civil Judge, Sidhout and pass such other order as this Honble court may deem fit and proper in the circumstances of the case and in the interest of justice.

Counsel for the Petitioner:

1. V NITESH

Counsel for the Respondent(S):

1. T JANARDHAN RAO

The Court made the following:

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No.2416 of 2026

ORDER:

The petitioner herein filed O.S.No.23 of 2025 on the file of the Court of III Additional Civil Judge (Junior Division), Kadapa, FAC Civil Judge (Junior Division), Sidhout, for recovery of an amount of Rs.4,55,850/- basing upon two promissory notes. The petitioner herein filed I.A.No.75 of 2026 in the said suit under Order 38 Rule 5 of C.P.C. to attach an amount of Rs.4,55,850/- being the retirement benefits under the head of earned leave salary and leave salary of the respondent-defendant.

2. The learned trial Court placing reliance on the judgment of the Apex Court in **Raman Tech. & Process Engineering Co., Vs. Solanki Traders** reported in (2008) 2 SCC 302, has dismissed the said I.A. vide order dated 31.07.2026, on the observation made by the Supreme Court that the object of the provision is not to convert an unsecured debt into a secured debt or to coerce the defendant into settlement, *inter alia*, observing that the attachment of the earned leave salary and leave salary which are service/retirement benefits of respondent and theri attachability is governed by the provisions of Section 60 of C.P.C. and the statutory protections available thereunder and, in the absence of

clear proof regarding the nature and availability of such benefits, coupled with the absence of proof satisfying the mandatory conditions prescribed under Order 38 Rule 5 C.P.C., the Court cannot exercise the extraordinary power of attachment before judgment.

3. Assailing the said order dated 31.07.2026 in I.A.No.75 of 2026, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

4. Learned counsel for the petitioner placed reliance on the judgment of Madras High Court in the case of **M.Kannasami Vs. G.Manoharan and another** reported in 2010 SCC Online Madras 4349, wherein it is held that Section 60 C.P.C. does not say the leave salary arrears are exempted from attachment. Hence, argued that the Court below is erred in dismissing the application and earned leave salary and leave salary can be attached, and they do not fall under Section 60 C.P.C.

5. Learned counsel appearing for the respondent-defendant has placed reliance on the judgment of the common High Court in the case of **Bezwada Yohanu Vs. Konangi Radha Krishna** reported in 2018(4) ALT 628. In the said judgment, it is observed as follows:

> "10. However, it is seen from the order of the Court below that the trial Court did not even examine the parameters to be

satisfied before passing an order under Order XXXVIII Rule 5. It is repeatedly held by the Supreme Court that an order of attachment before judgment is a harsh step and that the same cannot be resorted to in a routine manner. A useful reference can be made in this regard to Raman Tech & Process Engg. Co. and another v. Solanki Traders , where the Supreme Court indicated that the power under Order XXXVIII Rule 5 is a drastic and extraordinary power and that such power should not be exercised mechanically or merely for the asking. The Court should be satisfied about the existence of a prima facie case for the plaintiff. The Court should also be satisfied that with a view to obstruct or delay the execution of any decree, the defendant was about to dispose of the whole or any part of his property."

6. Learned counsel appearing for the petitioner-plaintiff referring to the judgment of **Bezwada Yohanu Vs. Konangi Radha Krishna**, it is argued that under Section 60(1)(g) of C.P.C., stipends and gratuities allowed to pensioners of the Government are not liable to attachment and earned leave salary and leave salary is not a stipend or gratuity so as to fall under Section 60(1)(g) of C.P.C. and therefore earned leave salary and leave salary can be attached. According to the judgment of the common High Court in the case of **Bezwada Yohanu Vs. Konangi Radha Krishna**, the earned leave encashment is not a stipend or

gratuity so as to fall under Section 60(1)(g) of C.P.C. and it can be attached. In view of the judgment of the Madras High Court, earned leave salary and leave salary can be attached as they do not fall under the purview of Section 60 of C.P.C.

7. Therefore, the impugned order dated 31.07.2026 passed in I.A.No.75 of 2026 in O.S.No.23 of 2025 on the file of the Court of III Additional Civil Judge (Junior Division), Kadapa, FAC Civil Judge (Junior Division), Sidhout, is hereby set aside and the matter is remanded to the trial Court to consider the case afresh, basing on the judgments that referred viz., **M.Kannasami Vs. G.Manoharan and another** and **Bezwada Yohanu Vs. Konangi Radha Krishna**.

8. Accordingly, the Civil Revision Petition is allowed, remanding the matter to the trial Court to consider the case afresh. There shall be no order as to costs.

As a sequel thereto, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 28.09.2026

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No.2416 of 2026

Date: 28.09.2026

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