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## Valaparla Bhaskara Rao Vs Chegu Madhava Rao

### Civil Revision Petition No. 3763 of 1991

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**Court:** Andhra Pradesh High Court

**Date of Decision:** Dec. 18, 1992

**Acts Referred:**

Andhra Pradesh Co-operative Societies Act, 1964 " Section 39#Civil Procedure Code, 1908 (CPC) " Order 21 Rule 46, 115, 4, 4(1), 60#Companies Act, 1956 " Section 2(7)

**Citation:** (1993) 1 ALT 404

**Hon'ble Judges:** S.V. Maruthi, J

**Bench:** Single Bench

**Advocate:** D.V. Reddy, for the Appellant;

**Final Decision:** Allowed

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### Judgement

@JUDGMENTTAG-ORDER

S.V. Maruthi, J.

This revision is filed against the order of the 1st Additional District Munsif, Guntur in E.P.No. 111 of 1991 in O.S.No.

407 of 1990 dated 21-10-1991, allowing the petition filed by the respondent-decree holder under Order 21 Rule 46 of the CPC for attachment of

the share capital of the Petitioner- judgment-debtor in a Co-operative Society.

2. The brief facts are as follows:- The petitioner is working as a Guard in the State Bank of India. He is a member of the State Bank of India

Employees" Co- operative Credit Society, Guntur. He invested Rs. 2,000/- towards his share capital in the society. The respondent is a money

lender from whom the petitioner took loan. The interest payable is very high. The respondent filed a suit O.S.No. 407 of 1990 on the file of the

District Munsif's Court, Guntur, against the petitioner and obtained a decree. In execution of the said decree, the respondent filed E.P.No. 111 of

1991 on the file of the 1st Additional District Munsif Court, Guntur and sought for attachment of the petitioner"s share capital invested in the S.B.I.

Employees Co-operative Credit Society, Guntur.

3. The petitioner contested the E.P. stating that his share capital lying in S.B.I. Employees Co-operative Credit Society, Guntur is not liable for

attachment u/s 39 of the A.P. Co-operative Societies Act, 1964. The learned 1st Additional District Munsif, Guntur rejected the said plea and

ordered attachment of the share capital of the petitioner lying in the Co-operative society by the impugned order dated 21st October, 1991.

Against the said order, the present revision is filed.

4. The learned 1st Additional District Munsif while rejecting the plea of the petitioner held that since the petition viz., E.P.No. 111 of 1991 was

filed under Order 21, Rule 46 of the Civil Procedure Code, according to which, the share of the judgment-debtor can be attached. The learned

District Munsif further held that u/s 60 of the Civil Procedure Code, the shares of the Judgment- debtor in a Corporation are liable to be attached

and that there is no exemption provided in Section 60 of the CPC that the shares in a Co- operative Society are not liable to be attached.

5. The main contention of the learned counsel for the petitioner is that u/s 39 of the A.P. Co-operative Societies Act, 1964 (hereinafter referred to

as "Act") the share or interest of a member in the capital of a society or of an employee shall not be liable to attachment or sale under any decree

or order of a Court, in respect of any debt or liability incurred by such member. Therefore, in view of the special provision u/s 39 of the Act, the

share capital is not liable to be attached. He also referred to Section 4 of the CPC which says that in the absence of any specific provision to the

contrary nothing in the Code shall be deemed to limit or otherwise affect any special or local law now in force. In view of Section 4 of the Civil

Procedure Code, Section 39 of the Act, which is a special law/local law, shall prevail over Order 21, Rule 46 of the CPC and Section 60 of the

Code. Therefore, it is argued that not with standing the fact that u/s 60 of the CPC the share capital of a member in a Co-operative Society is not

exempted, in view of Section 39 of the Act, which is a local law, read with Section 4 of the Civil Procedure Code, the share capital of a member in

a Co-operative Society is not liable to attachment. He also brought to my notice Section 2(7) of the Companies Act, 1956, defining ""Body

corporate"" or "corporation". According to the said definition, "body corporate" or "corporation" includes a company incorporated outside India

but does not include - (a)..... (b) a Co-operative Society registered under any law relating to Co-operative Societies and (c)..... Therefore,

though u/s 60 of the CPC shares in a Corporation are liable for attachment and sale in execution of a decree, in view of the definition of

Corporation u/s 2(7) of the Companies Act, excluding the Co-operative Society from the said definition, Section 60 of the CPC is not applicable.

In support of his contentions, the learned counsel for the petitioner relied upon the decision of this Court in Raja Kandimalla Seetharama Rao Vs.

Mothey Anja Ratna Raja Kumar, ., a decision of the Madras. High Court in Gokavarapu Swami v. Satheyya AIR 1936 Mad. 283., and a

decision of the Saurashtra High Court in Mulu Bhoja v. Shivubha Govind AIR 1956 Sau. 29.

6. In spite of service of notice on 27-2-1992, the respondent-Decreeholder has neither appeared before this Court nor is he represented by any

counsel.

7. The main contention of the learned counsel for the petitioner is that in view of Section 39 of the A.P. Co-operative Societies Act read with

Section 60 of the Civil Procedure Code, the share capital of a member in a Co-operative Society is not liable to attachment.

8. Section 39 of the A.P. Cooperative Societies Act to the extent relevant reads as follows:

39. Share or interest etc. not liable to attachment:- The share or interest, of a member in the capital of a society..... shall not be liable to

attachment or sale, under any decree or order of a Court, in respect of any debt or liability incurred by such member.....

9. Section 4(1) of the CPC reads as under:

4. Savings:- (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any

special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any

other law for the time being in force.

10. Sub-section (1) of Section 60 of the CPC reads as follows:

60. Property liable to attachment and sale in execution of decree:-

(1) The following property is liable to attachment and sale in execution of a decree namely,.....shares in a corporation.....belonging to

judgment-debtor.....

11. I have already extracted the definition of "Corporation" under the Companies Act, 1956.

12. A reading of Section 39 of the A.P. Co-operative Societies Act makes it clear that the share or interest of a member in the capital of a Co-

operative society is not liable to attachment or sale under execution of any decree or order of a Court, in respect of any debt or liability incurred by

such member. It is not disputed that the share capital of the petitioner in the Co-operative Credit Society is sought to be attached in execution of a

money decree obtained by the decree-holder. In view of Section 39 of the Co-operative Societies Act, the share of the petitioner in the capital of

the Co-operative Society is not liable to attachment. However, the 1st Addl. District Munsif is of the view that since the shares in a Corporation

are liable to attachment under Order 21, Rule 46 of the CPC read with Section 60 of the CPC where the share of a member in the capital of a

society is not exempted from attachment and since Section 60 of the CPC categorically says that the shares in a Corporation are liable to

attachment, the share of a member in the capital of a Co-operative society is liable to attachment.

13. It is true that Section 60 of the CPC says that shares in a Corporation are liable to attachment. However sub-section (7) of Section 2 of the

Companies Act, while defining a "body corporate" or "Corporation" excludes a Co-operative Society registered under any law relating to Co-

operative Societies. Therefore, the shares in a corporation mentioned u/s 60 of the CPC do not include the shares in the capital of a Co- operative

Society. The learned District Munsif therefore is not correct in holding that u/s 60 of the Civil Procedure Code, the share of a member in the capital

of a co-operative society is liable to attachment.

14. The second limb of the argument of the learned counsel for the petitioner is that in view of the savings clause provided in Section 4 of the Civil

Procedure Code, saving any special or local law, the provisions under Section 39 of the A.P. Co-operative Societies Act will prevail over Section

60 of the Civil Procedure Code, as the said Act is a special law and therefore notwithstanding the fact that no exemption is provided u/s 60 of the

Civil Procedure Code, the share capital in a Co-operative Society is not liable to be attached. It is not disputed that A.P. Co-operative Societies

Act is a special law relating to Co- operative Societies. Therefore, in view of Section 4 of the Civil Procedure Code, the provisions of Section 39

of the A.P. Co-operative Societies Act are saved from the applicability of the provisions contained in Section 60 of the Civil Procedure Code.

15. We may in this context refer to the judgment of this Court in (1) supra where the relevant facts are as follows:

16. The appellant was sought to be arrested and detained in prison in execution of a money decree obtained by the respondent against him. The

appellant resisted the petition on the ground that being a land-holder within the meaning of the Madras Estates (Abolition and Conversion into

Ryotwari) Act XXVI of 1948, the decree cannot be lawfully executed against his person. It was held that a Civil Court has undoubted power to

order execution of a decree by the arrest and detention in prison of a judgment-debtor, but that power, under the very terms of Section 51 of the

CPC is subject to such conditions and limitations as may be prescribed in the Code. Further, because of Section 4 of the CPC it is controlled by

the provisions, if any, of any Special or Local Law. Sections 58-A and 59 of the Madras Estates (Abolition and Conversion into Ryotwari) Act,

1948 are the provisions of such Act which ensure for the landholder immunity from arrest in execution proceedings at all stages. These provisions

are mandatory in character based as they are on public policy. In view of their overriding effect they exact their obedience in full.

17. To the same effect is the decision of the Madras High Court in (2) referred to supra. It was held that the attachment of the standing crop on

potter service mam lam is prohibited by Madras Act 3 of 1895. Therefore, it was held that the attachment of the standing crop on the potter

service inam land in execution of the decree obtained by a decree-holder in a small cause suit is contrary to law in view of Section 5 of Madras

Act 3 of 1895.

18. We may also refer to the decision of the Saurashtra High Court (3 surpa) wherein the relevant facts are as follows:

19. The respondent obtained a money decree against the appellant who is an agriculturist. He filed an application for execution of the decree by

attachment and sale of the appellant's agricultural land. The defence taken was that the agricultural lands are not liable to attachment in execution

of a decree by virtue of the provisions of the Agriculturists' Relief Act of the Nawanagar State. It was held that "Agricultural land in the former

Nawanagar State, whether an occupancy or otherwise, was exempt from attachment by the special law of the Nawanagar State, namely,

Agriculturists' Relief Act and that exemption must prevail against the general rule contained in Section 60 of the Code which was brought into

force in Saurashtra on 20-9-1948 by Section 9(3) of Ordinance 25 of 1948. It must therefore be held that the special exemption from attachment

of agricultural land provided by the Nawanagar State Act continued after the C.P. Code was brought into force into Saurashtra.

20. As pointed out earlier, the Andhra Pradesh Co-operative Societies Act being a special local law relating to Co-operative Societies, it should

prevail upon the provisions of the Code of Civil Procedure, namely, Section 60 of the Civil Procedure Code.

21. In view of the above, I am of the view that the share of the petitioner in the capital of the S.B.I. Employees' Co-operative Credit Society,

Guntur is not liable for attachment. Consequently, the order of the learned District Munsif dated 21-10-1991 in E.P.No. 111 of 1991 is liable to

be set aside.

22. Accordingly, this revision petition is allowed and the order of the 1st Additional District Munsif, Guntur is set aside. There shall be no order as

to costs.