

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4203 OF 2015

ORDER:-

The order dated 11.08.2015 in I.A.No.1132 of 2014 in O.S.No.101 of 2014, passed by the learned 1st Additional District Judge at Nalgonda, refusing to order attachment before judgment with respect to the property, is challenged before this Court.

It is the case of the petitioner that the respondent had borrowed a sum of Rs.16,00,000/- from the petitioner and executed a Demand Promissory Note agreeing to repay the said amount along with interest at the rate of 24% per annum and as he had failed to pay the said amount, petitioner initiated the suit proceedings basing on the said promissory note. Pending disposal of the suit, petitioner filed I.A.No.1132 of 2014 seeking attachment before judgment under Order XXXVIII Rule 5 of Code of Civil Procedure (in short "the CPC") and the Court below came to conclusion that the ingredients that are required to be satisfied for granting attachment are not satisfied, particularly, the factum of the respondent/defendant trying to alienate the schedule property has not been brought out.

It is the contention of the learned counsel for the petitioner that the petitioner had filed third party affidavit to support his case and in terms of Section 139 of the CPC, it is for the defendant to have prayed for cross-examination of the party.

On the other hand learned counsel for the respondent by placing reliance on the judgment of the Supreme Court in **Raman**

Tech. & Process Engg.Co., and Another Vs. Solanki Traders [\[1\]](#)

and also the judgment of the Calcutta High Court in **Premraj Mundra Vs Md. Maneck Gazi & Others**^[2], submits that the necessary ingredients under Section 139 of the CPC are not satisfied.

Though the learned counsel for the petitioner submits that it is open for the defendant to ask for cross-examination of the petitioner or the third party, the important aspect of the matter is that it is for the petitioner to satisfy by placing cogent and satisfactory material that the defendant to defeat the decree that may be passed against him, is in the process of alienating or parting away with the property. Except filing of the third party affidavit, wherein it has been stated that the defendant had approached offering to sell his agricultural land for a consideration of Rs.30,000/- on account of his financial crisis being faced by him, there is no material to support the same by way of any agreement. It may be borne in mind that in view of the amendments which are brought in to the Stamp Act, even a contract of sale is also required to be reduced into writing and adequately stamped. Further, even if assuming that the third party affidavit is taken to be true, at best the same would only disclose that there was an offer made by the defendant which came to be declined by the deponent. In those circumstances, one of the *prima facie* ingredients that are required to be satisfied for the purpose of granting of attachment before judgment is not satisfied in the facts of the present case. In that view of the matter, the order of the court below cannot be found fault with. However, it is made clear that as and when the petitioner has material to satisfy the Court, petitioner is at liberty to approach the court below seeking appropriate relief.

With the above observation the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall also stand closed.

CHALLA KODANDA RAM, J

Date: 23.12.2015.

Ssv

[\[1\]](#) (2008) 2 Supreme Court Cases 302

[\[2\]](#) 1951 AIR (Cal) 156