

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Civil Revision Petition No.3136 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the plaintiff in O.S.No.21 of 2015 on the file of the XXIV Additional Chief Judge, City Civil Court, Hyderabad, aggrieved by dismissal of I.A.No.47 of 2015, by order dated 16.07.2015.

The petitioner-plaintiff filed the aforesaid suit for recovery of a sum of Rs.15,61,360/-. The impugned order is passed rejecting I.A.No.47 of 2015 filed under Order 38 Rule 5 read with Order XXI Rule 47 read with Section 151 CPC, in which the petitioner sought directions to the 2nd respondent to withhold the retirement benefits of the 1st respondent till disposal of the main suit. The said I.A. is dismissed.

It is the case of the petitioner that the 1st respondent herein has approached her on two occasions for financial help of Rs.7 lakhs and Rs.5 lakhs and she has arranged the same and the 1st respondent herein executed promissory notes to pay back the said amount with interest at 24% per annum. Pleading that some cheques issued by the 1st respondent towards repayment were dishonoured and an amount of Rs.30,000/- was paid on 31.10.2014, suit is filed for recovery of money with interest. It is alleged that when the presented the cheques issued by the 1st respondent in the banks, the same were dishonoured with endorsement "funds insufficient". Further pleading that the 1st respondent did not repay the amount as promised as per the promissory notes and cheques issued by her were dishonoured for insufficiency of funds and further alleging that the 1st respondent is a co-employee and she is going to retire shortly and if her retirement benefits are allowed to be paid, it will become difficult to recover the amount due from her, the said I.A., is filed seeking directions to the 2nd respondent to withhold the retirement benefits of the 1st respondent.

Counter-affidavit is filed by the 1st respondent. It is alleged that even

according to the petitioner, petitioner has arranged loan, but she has not paid any money to her; as such, petitioner cannot sue on behalf of others. In the written statement, it is pleaded that she had arranged some money to one of her friends for her daughter's marriage and the petitioner took empty signed promissory notes, empty signed cheques and also her ATM card and taking advantage of her helplessness, petitioner has unauthorisedly withdrawn the entire salary on 30/31 dates of the month. Further pleading that she has not received any money from the petitioner and the retirement benefits are exempted from attachment from the Civil Court, she has prayed for dismissal of the I.A.

The Court below, having considered the rival contentions of the parties, dismissed the I.A., by the impugned order.

Heard the learned counsel for the parties and perused the material on record.

It is contended by Sri Venkata Rao Patil, learned counsel for the petitioner that as much as cheques issued by the 1st respondent are dishonoured with endorsement "funds insufficient", if the 1st respondent is allowed to draw the retirement benefits, it would become difficult for the petitioner to recover the money due from the 1st respondent.

It is further contended that all the retirement benefits are not exempted under Section 60 CPC, as such, the impugned order is passed without appreciating the relevant provision in a proper perspective.

On the other hand, it is contended by the learned counsel for the 1st respondent that the petitioner has not paid any money to the 1st respondent and by obtaining blank signed promissory notes, false claim is made in the suit. It is further contended that there are no allegations attracting the ingredients as contemplated under Order 38 Rule 5 CPC so as to order attachment as sought. It is also contended that the I.A., is filed without even impleading the 2nd respondent as party to the I.A., and as the petitioner has not stated any valid grounds in the I.A., the court below has rightly dismissed the I.A., and there are no grounds to interfere with the impugned order in this petition under Article 227 of the

Constitution of India.

Undisputedly, I.A.No.47 of 2015 is filed under Order 38 Rule 5 read with Order XXI Rule 47 read with Section 151 CPC. Under Order 38 Rule 5 CPC, the Court is empowered to order attachment only when the Court is satisfied by affidavit or otherwise that the defendant with intent to obstruct or delay execution of any decree that may be passed against him, is about to dispose of whole or any part of his property, or is about to remove whole or any part of his property from the local limits of the Court. Only in such contingency, the Court, when satisfied by affidavit or otherwise, can order attachment or withhold any amount. In the case on hand, except stating that if the retirement benefits to be paid to the 1st respondent are allowed to be paid to her, she will withdraw the said benefits and if the same is done it will cause wrongful loss to the petitioner, no other ground, as contemplated under Order 38 Rule 5 CPC, is urged. Apart from the said allegation, no material is placed on record to show that the 1st respondent is trying to dispose of the property or taking any steps for removal of the property from the jurisdiction of the Court. Hence, this Court is of the view that the petitioner did not satisfy the requirement as contemplated under Order 38 Rule 5 CPC. Moreover, it is the specific case of the 1st respondent that she has not received any money from the petitioner and even according to the petitioner, she has arranged for payment of money to one of her friends and the 1st respondent has executed the promissory notes. It is further the case of the 1st respondent that petitioner has taken empty promissory notes and also ATM card and withdrew her salary illegally. However, such aspects are triable issues which can be adjudicated after full-dressed trial. But, the petitioner failed to make out any case for withholding of the retirement benefits of the 1st respondent. As such, I see no reason to interfere with the impugned order in this petition under Article 227 of the Constitution of India.

Civil Revision Petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the CRP stand closed.

R. SUBHASH REDDY, J

October 1, 2015

MRR