

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.4563 OF 2015

ORDER:

The order under revision is the order passed by the Special Sessions Judge for the Trial of SC & ST Cases (Prevention of Atrocities) Act-cum-Additional District & Sessions Judge, Visakhapatnam in I.A. No.1073 of 2014 in O.S. No.699 of 2014 dated 01.05.2015. The defendant in O.S. No.699 of 2014 is the petitioner herein. The respondent-plaintiff filed I.A. No.1073 of 2014 in O.S. No.699 of 2014, under Order 38 Rule 5 CPC, seeking attachment of the petition schedule property pending disposal of the suit.

It is the case of the respondent herein that the petitioner was due a sum of Rs.10,64,533/-; a pronote was executed by him on 03.06.2012 for Rs.8,00,000/-; inspite of oral and written demands, he did not choose to repay the amount; he was due amounts to several creditors; with a view to defraud them, including the petitioner, he was trying to alienate the petition schedule property in favour of third parties, and was planning to leave the jurisdiction of the Court; except for this property, he had no other property; and, in case the petitioner-plaintiff were to succeed, he cannot realise the amount even if, ultimately, a decree is passed in his favour.

In the order under revision, the Court below noted that a counter was filed denying the plaint averments and execution of the suit promissory note; it was contended that the suit promissory note was a rank forgery; and it was also denied that any attempt was made to alienate the schedule property with a view to defraud creditors.

In the order under revision, the Court below observed that the revision petitioner herein did not deny owning the petition schedule land; the respondent-plaintiff had filed two 3rd party affidavits of Dokala Gowrinaidu and Boddakayala Chinnaidu in support of his contention that the revision petitioner was trying to alienate the petition schedule land, and

was planning to leave the jurisdiction of the Court; they had also stated that, except the petition schedule land, he had no other properties; the revision petitioner did not give details of the properties, if any, other than the schedule lands; a *prima facie* case was made out that there was a debt, and of his attempts and trials to alienate the schedule property to others; and it was the specific case of the respondent-plaintiff that the revision petitioner was making trials to alienate the property to defeat their claim, and delay execution of the decree. The Court below was satisfied, on the basis of the material on record, that, in case the revision petitioner succeeded in his attempts to dispose of the petition schedule property, the respondent-plaintiff would face great hardship. The petition was allowed, and the petition schedule property was attached.

Sri Sriman, Learned Counsel for the petitioner, would submit that the satisfaction which the Court is required to arrive at, before ordering attachment before judgment under Order 38 Rule 5 CPC, must be based on the material on record which should disclose sufficient details to establish that the property, sought to be attached, was being alienated either in whole or in part, or that the defendant was about to remove the whole or any part of the property from the local limits of the jurisdiction of the Court. He would rely on **Sripathi Panditarajula Venkanna Babu v. Varalakshmi Finance Corporation, Rajahmundry**^[1].

While examining the scope of Order 38 Rule 5 CPC, the Division bench of this Court, in **Sripathi Panditarajula Venkanna Babu**¹, observed:

“.....An order of attachment before judgment affects the right of the owner of the property to deal with the same even before any verdict is available against him as regards the claim of the plaintiff. Such an order is not to be passed merely for the asking or in the routine manner. There must be cogent, *prima facie* materials to lead the Court to the conclusion that there have been attempts by the defendant to dispose of the property with a view to defeat the decree. Mere satisfaction that there has been an attempt to dispose of the property is in itself not sufficient and there must be further conclusion, again *prima facie*, that the attempt to alienate is to delay or defeat the decree. For reaching such satisfaction, there has to be before the Court some tangible material than the mere statement without giving any particulars and without disclosing the source of the information of attempted alienation. The learned Subordinate Judge should have been alert to the fact that there was actually no third party affidavit as the second affidavit was only of the Clerk of the respondent-firm who was under its control as an employee. **The affidavits in themselves do not disclose as to when an attempt was made to alienate, what type of alienation**

was intended to be made and to whom the alienation was being desired to be made and who gave such information..... (emphasis supplied).

It is evident, from the aforesaid judgment, that an order of attachment before judgment is not to be passed for the mere asking; and the affidavits, if any filed in support of the plea that the defendant was seeking to alienate his property, must contain sufficient particulars as to when an attempt was made to alienate; the mode of alienation; to whom alienation was desired to be made; and as to who gave such information. Neither the affidavit filed in support of the I.A, nor the 3rd party affidavits filed by the respondent-plaintiff, contain any such details. All that is stated, in the 3rd party affidavits, is that the revision petitioner was trying to alienate the landed property, and was planning to leave the jurisdiction of this Court. The basis on which the 3rd parties were of the view that the defendant was seeking to alienate the landed property is not disclosed in their affidavits. The Court below has also failed to take into consideration the specific averment in the counter-affidavit that the persons, who swore to the 3rd party affidavits, were relatives of the plaintiff and would dance to his tunes.

The submission of Sri G.V.S. Kishore Kumar, Learned Counsel for the respondent-plaintiff, that, even if the 3rd party affidavits are presumed to have been given by the petitioner's relatives, it would not justify ignoring such 3rd party affidavits, has considerable force. What is disconcerting, however, is that the 3rd party affidavits, on which the Court below placed reliance on, is bald and vague, and does not contain any details whatsoever as to how these 3rd parties came to know that the revision petitioner was trying to alienate the said landed property, and to whom. The material placed on record by the plaintiff, for seeking attachment before judgment, does not satisfy the requirements of Order 38 Rule 5 CPC.

The order under revision must be and is, accordingly, set aside. The Civil Revision Petition is allowed. However, in the circumstances,

without costs.

RAMESH RANGANATHAN, J

Date: 31.12.2015.
MRKR

[\[1\]](#) 1996(4) ALD 453 (D.B)