

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.315 of 2013

ORDER :

This Revision is filed challenging the order dt.26.12.2012 in I.A.No.2754 of 2012 in O.S.No.1215 of 2012 on the file of I Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar.

2. The petitioner herein is the 3rd defendant in the suit.

3. The petitioner herein and respondent nos.2 and 3 along with others are partners in a firm by name M/s. Jagini Associates (for short, 'the firm'). Certain cheques were issued by respondent nos.2 and 3 to 1st respondent in their personal capacity which were dishonoured, and to recover the said amounts, the suit was filed by 1st respondent against respondent nos.2 and 3. The petitioner has been impleaded as 3rd defendant in the suit by the 1st respondent merely stating that he is a necessary party without whom the suit cannot be disposed of.

4. Pending suit, the 1st respondent herein filed I.A.No.2754 of 2012 under Order 38 Rule 5 C.P.C. to attach plaint 'B' schedule property which is an apartment

bearing No.505 in an apartment complex constructed by the partnership firm stating that this particular property falls within the share of respondent nos.1 and 2 as well as the petitioner.

5. By order dt.26.12.2012, a conditional order of attachment was issued by the court below, directing petitioner as well as respondent nos.2 and 3 to furnish security for the suit amount on or before 28.01.2013 and conditional attachment of the plaint 'B' schedule property was directed by 28.01.2013 in the mean time.

6. Challenging the said order, the present Revision is filed.

7. Heard the counsel for petitioner, Sri M.V.S. Suresh Kumar; and Sri B.K.M. Chakravarthy, counsel for 1st respondent.

8. The counsel for petitioner contended that the cheques had been issued by respondent nos.2 and 3 admittedly in their personal capacity and not on behalf of the firm; and that the plaint 'B' schedule property which is an asset of the firm could not have been attached by 1st respondent for realization of the amounts due on the dishonoured cheques, allegedly issued by respondent nos.2 and 3 in their personal capacity.

9. On the other hand, the counsel for 1st respondent

refuted the said allegation and contended that the 1st respondent intended to attach the share of respondent nos.2 and 3 in the partnership firm which is admittedly moveable property and which is capable of being attached before judgment and there is no error in the order passed by the Court below in attaching the plaint 'B' schedule property at the instance of 1st respondent.

10. I have noted the submissions of both sides.

11. There is no dispute that interest of a partner in the partnership property is movable property even though partnership assets are immoveable properties. Therefore, it is susceptible to attachment under Order 38 Rule 5 as well as Order 21 Rule 40 (1) C.P.C. (see **M/s. Raja Theatre, Coimbatore v. M/s. Selvam Financiers and others**^[1] and **Narayanappa v. Bhaskarakrishappa**^[2])

12. It may be that it was the intention of 1st respondent to seek attachment of the share of respondent nos.2 and 3 in the partnership firm, but the application filed by 1st respondent was not to attach the share of respondent nos.2 and 3 in the firm but to attach specific immovable property, i.e., the plaint 'B' schedule property. Since the claim in the suit is in respect of amounts allegedly due in the personal capacity by respondent nos.2 and 3 and not in their capacity as partners of the firm and since in suit, no relief is being sought against the firm, the plaint 'B'

schedule property, which is admittedly an asset of the firm, could not have been attached by 1st respondent.

13. In this view of the matter, I am of the opinion that the order passed by the Court below cannot be sustained. Therefore, the order dt.26.12.2012 in I.A.No.2754 of 2012 in O.S.No.1215 of 2012 on the file of I Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar is set aside. Accordingly, the Civil Revision Petition is allowed. No order as to costs.

14. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-07-2015

Ndr/*

[\[1\]](#) AIR 1992 MADRAS 227

[\[2\]](#) AIR 1966 SC 1300