

A.No.2461 of 2016
in
C.S. No.292 of 2016

M.M.SUNDRESH, J.

This is an application filed under Order 38 Rule 5 C.P.C., in a suit filed for recovery of money and damages. At the time of entertaining the suit, this Court was pleased to pass an interim order.

2.When the matter was taken up for hearing, learned senior counsel for the first respondent/defendant submitted that the parameters as required under Order 38 Rule 5 C.P.C. are not satisfied.

3.Admittedly, the applicant is an unsecured creditor. Learned counsel for the applicant submitted that even the communication found at page No.68 of the typed set of papers, would show the liability of the defendant. By way of reply, learned senior counsel for the first respondent/defendant submits that the first respondent/defendant would furnish a bank guarantee for a sum of Rs.20 lakhs, without prejudice to the rights of the first respondent/defendant.

4.Considering the above submission, this Court is of the view that the said undertaking would be sufficient, particularly, in view of the nature of claim and the applicant, being an unsecured creditor, though there are prima facie materials in support of his claim. Accordingly, the application stands closed, recording the undertaking made on behalf of the first respondent/defendant that a bank guarantee for a sum of Rs.20 lakhs would be furnished.

5.In view of the above, the interim order granted earlier is vacated. Since furnishing of bank guarantee requires de-freezing of the account, the account of the first respondent/defendant shall be de-freezed and the first respondent/defendant shall furnish the bank guarantee for a sum of Rs.20 lakhs, within a period of two weeks thereafter.

27.06.2016

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Note: Issue copy of the order on 29.06.2016

M.M.SUNDRESH, J.

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