

ORDER :

Impugning the ad-interim order of the attachment before Judgment dated 14.03.2016 passed by the learned Senior Civil Judge, Suryapet of Nalgonda District in I.A. No.91 of 2016 in O.S. No.40 of 2016, in the suit filed by the respondent-plaintiff against the petitioner/defendant of the revision petition, for recovery of amount, which is an alternative relief for Rs.4,10,000/- from the main relief of the suit for specific performance, the present revision is maintained.

2) Heard both sides and perused the respective contentions.

3) In fact, in a suit for specific performance there can be enforceability under Section 55 of the Transfer of Property Act for alternative relief of refund, if granted against the property covered by the sale agreement. It is practically a charge for recovery. No doubt, the granting of the relief arises from the pleading. Here, strangely the plaintiff sought attachment before judgment of the subject matter of the sale agreement property, instead asking for such a charge to enforce under Section 55 of the Transfer of Property Act as part of the main prayer in the suit, rather than maintaining the interlocutory application for attachment before Judgment. The ad-interim exparte order passed by the Court is not by giving any notice to the respondent/defendant directing him to furnish security, before passing the attachment order in authorizing the Amin to ask for security. It is rather saying anything mentioned by the Amin of notice served to that effect as there is nothing even serving of notice to furnish security by Amin and waiting for 48 hours as contemplated in the warrant of the Court even.

4) It is the core of the contention in attacking, the order is illegal and contrary to the provisions of Order XXXVIII, Rules 5 and 6 C.P.C. Undisputedly the defendant-respondent who is the revision petitioner herein, subsequently filed application before the trial Court undertaking not to alienate the property.

5) The purpose and object of the attachment before Judgment generally in a recovery of money suit simplicitor is to assure the recovery of the amount in the event of decree in favour of the plaintiff, so that, there cannot be putting of spokes to the execution over the property attached for recovery. Here, it is not such a suit, but for suit

for specific performance.

6) Having regard to the above and from hearing of both sides and from the submission of the revision petitioner that he is ready to offer third party immovable property security in the event of success of the plaintiff for alternative suit relief, for the plaintiff's recovery of the same, this Court feels just to record the same by allowing the revision petition to that extent setting aside the lower Court's order.

7) Accordingly and in the result, the revision petition is allowed to the extent of setting aside the order of the lower Court subject to the condition of the revision petitioner/defendant furnishing third party immovable property security within one month from the date of receipt of the order and till then the order, by virtue of this observation, will be in force. In the event of non-compliance of the order of this Court within the time supra, the order of the lower Court holds good and in the event of complying this order, the attachment before Judgment order, affected by the Court through Amin, ceases its force as if there is no attachment from the beginning. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, shall stand dismissed.

DR.JUSTICE B.SIVA SANKARA RAO

Dt.15.07.2016

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