

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL NO.843 OF 2016

J U D G E M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)

Heard Sri Challa Dhanamjaya, learned counsel for the appellant/defendant, and Sri T.S.Anand, learned counsel on caveat for the respondent/plaintiff.

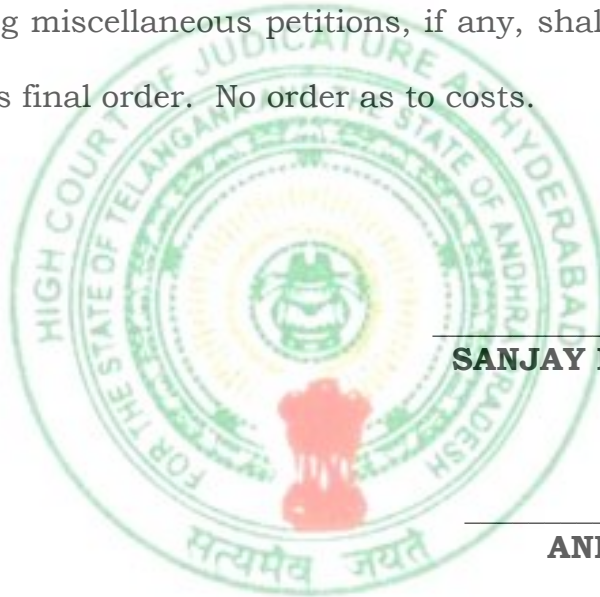
This appeal under Order 43 Rule 1 CPC arises out of the order dated 20.10.2016 passed by the learned V Additional District Judge, East Godavari at Rajamahendravaram, in I.A.No.1108 of 2016 in O.S.No.133 of 2016. By the said order, the trial Court directed the appellant/defendant to furnish security for the suit amount within five days, failing which the petition schedule property was directed to be attached.

Perusal of the order under appeal reflects that the respondent/plaintiff filed the subject suit for recovery of a sum of Rs.86,96,500/- with future interest on the strength of a promissory note dated 20.11.2011. The I.A. was filed by him alleging that the appellant/defendant was trying to sell away the petition schedule property and leave the jurisdiction of the Court so as to defraud the respondent/plaintiff. Surprisingly, the trial Court having set out the legal position that the power under Order 38 Rule 5 CPC was drastic and an extraordinary power which should not be exercised mechanically or for the mere asking and that it should not be used for the purpose of converting an unsecured debt into a secured debt, went on to set out case law on the subject at great length and concluded baldly that the respondent/plaintiff had made out a *prima*

facie case to grant attachment before judgment. The trial Court accordingly allowed the petition and granted relief.

There is no discussion whatsoever on facts or on the merits of the case. In that view of the matter, we are left with no option but to set aside the order under appeal on this short ground and remit the matter to the trial Court for consideration afresh on the merits of the case and in accordance with law.

The Civil Miscellaneous Appeal is accordingly allowed. The trial Court shall endeavour to dispose of the I.A. expeditiously and preferably within one month from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

ANIS, J

24th OCTOBER, 2016

PGS