

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.3059 of 2016

ORDER:

Aggrieved by the Docket Order dt.03.05.2016 in I.A.No.80 of 2016 in I.A.No.613 of 2015 in O.S.No.331 of 2015 on the file of Principal Junior Civil Judge, Kothagudem, Khammam District, the revision petitioner, who is the defendant before the trial Court, filed the instant petition.

2) The brief facts of the case are that the respondent herein/ plaintiff filed O.S.No.331 of 2015 against the revision petitioner/ defendant for recovery of Rs.2,96,000/- with interest and costs. Along with the suit, he filed I.A.No.613 of 2015 under Order 38 Rule 5 CPC seeking to attach an amount of Rs.2,96,000/- from the terminal benefits of the petitioner/defendant and the trial Court in its Order dt. 17.12.2015 while directing the Bailiff of the Court to issue show cause notice on defendant to furnish a third party security for an amount of Rs.2,96,000/-, ordered interim attachment of the said amount. Thereafter, it appears, the petitioner/defendant filed I.A.No.80 of 2016 praying the Court to accept his house property situated in Gandhi Nagar Colony, Sarapaka Village, Burgampad Mandal, Khammam District, as security, and raise the attachment relating to his terminal benefits, as ordered earlier. The trial Court, in its impugned Order dt.03.05.2016, dismissed his application on the main observation that while the Court ordered him to furnish a third

party security, instead, he offered his own property as security and as the property offered as security is not that of a third party, the same cannot be accepted.

Hence, the Civil Revision Petition.

3) Heard arguments of Sri Kowturu Vinaya Kumar, learned counsel for revision petitioner and Sri S. Madan Mohan Rao, learned counsel for respondent and with their consent, the present Civil Revision Petition is disposed of at the stage of admission.

4) Learned counsel for petitioner would submit that as per the relevant provisions of Code of Civil Procedure, 1908, law never laid down that the property offered as security should invariably be that of a third party and a party in due compliance of Court's Order, can, offer his own property as security and it is suffice, if the property offered by him is free from encumbrances and it has got salable value, which can meet the amount of the decree that may ultimately be passed in the suit and in that view of the matter, the trial Court was not justified in dismissing his application on the sole ground that the property offered by the petitioner/defendant was his own property and the security ordered was of a third party. He, thus, prayed to allow the Petition.

5) On the other hand, learned counsel for respondent/plaintiff while not disputing with the legal position as to the nature of security to be offered by a party, argued that in the instant case, the house

property proposed to be offered as security by the petitioner/defendant is hit by Section 5 of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, and therefore, he has no objection if the petitioner/defendant offers a suitable property whether it belongs to him or that of a third party property which is free from legal defects and if the trial Court accepts that property. He, however, submit that he may be given an opportunity to file counter and put forth his objections before the trial Court accepts the property to be offered by the petitioner/defendant as security.

6) Order 38 CPC deals with the Arrest and attachment before Judgment. Order 38 Rule 5 of CPC is germane for our discussion. It reads thus:

“Order XXXVIII Rule 5: Where defendant may be called upon to furnish security for production of property—

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to

satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void”.

7) So on a close scrutiny, the provisions under Order 38 Rule 5 of CPC would not suggest that the Court can order the defendant to offer only the property of a third party, as security. It may be in extreme cases, where the defendant has no properties within the jurisdiction of the Court which passes the order, which may cause hindrance for execution of the decree, that the Court may direct him to offer security of a third party who has properties within the jurisdiction of that Court. That appears to be not the situation in this case as the impugned order is silent in that regard. As such and in view of the law being clear to the effect that Order 38 Rule 5 of CPC only spells out security and not specifying third party security, the trial Court could have considered the request of the petitioner/defendant to accept his personal house property as security. Hence I find force in the submission of learned counsel for revision petitioner/defendant.

8) Accordingly, the impugned Order is set aside and the Civil Revision Petition is allowed and ordered as follows:

a) The revision petitioner/defendant is at liberty to offer a property belongs to him or of a third party as security before the trial Court within four(4) weeks from the date of this order and if he does so, the trial Court after affording an opportunity to respondent/plaintiff to put-forth his objections with regard to the title, value and other aspects relating to the said property, pass an appropriate order on merits within One(1) month from the date of respondent/plaintiff submitting his objections if any. Needless to emphasize that till such an Order is passed, the attachment already made in respect of terminal benefits of the revision petitioner/defendant shall subsist.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 02.09.2016
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