

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No. 2496 of 2016

ORDER:

This revision is filed at the instance of the plaintiff in a suit for recovery of money, challenging the order passed by the XIII Additional District and Sessions Judge, Vijayawada, by which the trial Court ordered raising of attachment of the property of the 1st defendant on condition that the 1st defendant furnished security to the extent of Rs.50,00,000/- on or before 02.06.2016.

2. Heard Mr. G. Narasimha Rao, learned counsel for the petitioner/plaintiff and Mr. V.V.N. Narayana Rao, learned counsel for the respondent/1st defendant.

3. The plaintiff filed a suit in O.S.No.50 of 2010 for recovery of a sum of Rs.40,87,000/- together with interest on the principal amount of Rs.30,00,000/- at the rate of 24% per annum. Pending suit he filed I.A.No.4027 of 2010 for attachment of the property of the 1st defendant. By an order dated 25.08.2010 the property of the 1st defendant was directed to be

attached.

4. In the year 2016 the 1st defendant filed an application in I.A.No.88 of 2016 for raising the order of attachment, with an offer to furnish bank guarantee. Finding that the wife of the 1st defendant was suffering from bone cancer and undergoing treatment at the Cancer Hospital, the trial Court took a sympathetic and pragmatic view and ordered the raising of attachment subject to the condition that the 1st defendant furnished security to a tune of Rs.50,00,000/-.

5. Not satisfied with such an order, the plaintiff has come up with the above revision.

6. I find that the grievance of the plaintiff is wholly unjustified. The borrowing was allegedly made on 01.09.2008. The amount borrowed was Rs.30,00,000/-. The interest mentioned in the promissory note is 24% per annum. The suit was filed on 04.03.2010. The amount claimed in the suit together with interest up to the date of filing of the suit was Rs.40,87,000/-.

7. Therefore, taking note of the above, the trial

Court directed the 1st defendant to furnish security to the extent of Rs.50,00,000/-.

8. The grievance of the petitioner/plaintiff is that the interest accumulated upto 2016, together with the principal amount would cross more than Rs.72,00,000/- and that, therefore, the quantum for which security was directed to be furnished was insufficient. In support of his contention that the Court below should have ordered security for a higher amount, the learned counsel for the petitioner/plaintiff invited my attention to the provisions of Rules 5 & 6 of Order 38 of C.P.C.

9. I am unable to appreciate the stand taken by the petitioner/plaintiff. The facts narrated above would show that the Court below had gone on the basis of the reasonable amount for which security could be directed to be furnished. The plaintiff cannot fix a date and determine the amount that would be decreed in his favour. Order 38 Rule 5 of C.P.C. does not give scope for taking a probable date of decree of suit, so as to compel the defendant to furnish security to such an extent.

10. In order to demonstrate his *bona fides*, the

respondent/1st defendant has actually taken two demand drafts for Rs.25,00,000/- each drawn on State Bank of Hyderabad in favour of the II Additional District Judge. The demand drafts are dated 25.05.2016. But, they could not be deposited due to the interim stay granted by this Court on 26.05.2016.

11. It is well settled that the provisions of Order 38 Rule 5 of C.P.C. are not intended for the benefit of merchants of Venice. They are intended to safeguard the interest of the creditor to the extent feasible. The loan was obviously an unsecured loan. Therefore, I find nothing wrong in the order of the Court below. Hence, the Civil Revision Petition is dismissed. Since the respondent/1st defendant has already taken two demand drafts, the time granted to him to furnish security is extended upto 15.06.2016. The Court below shall accept the demand drafts, if deposited by the respondent/1st defendant on or before the said date. Upon such deposit, the Court below shall keep the same in a fixed deposit so that the benefit of the same will accrue to either of the parties. The Court below shall endeavour to dispose of the suit within a period of two (2) months

and the respondent/1st defendant shall cooperate with the same.

As a sequel, the interim order granted by this Court on 26.05.2016 is vacated and miscellaneous petitions, if any, pending in the revision shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

3rd June, 2016

Note: Furnish C.C. by 07.06.2016.

(b/o)

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