

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.5066 OF 2016

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the docket order dated 09.09.2016 passed by the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar, in EASR No.994 of 2016 in EP No.10 of 2015 in O.S.No.1505 of 2014. This application was filed under Order 21 Rule 52 CPC to call for the amount attached as per the order in I.A.No.245 of 2015 in O.S.No.1505 of 2014, which was lying to the credit of O.S.No.20 of 2011 on the file of the learned III Additional District Judge, Nandyal, Kurnool District. By the docket order dated 09.09.2016, the Executing Court returned the application with the following endorsement:

“An information was received from III Additional District Judge, Kurnool, intimating this Court that the amounts of attachments in various Suits has exceeded the amount available in credit. Hence returned.”

O.S.No.1505 of 2014 was filed before the learned I Additional District Judge, Ranga Reddy District at L.B. Nagar, by the petitioner for recovery of a sum of Rs.1.00 Crore from the respondent herein. I.A.No.2027 of 2014 was filed therein by the petitioner/plaintiff for attachment of a sum of Rs.1.00 Crore which was with the Indian Overseas Bank, Nandyal, in the account of the respondent. By order dated 24.12.2014, the trial Court directed the respondent herein to furnish third party immovable security for the said sum within a timeframe coupled with a conditional order of attachment of the amount lying in the bank account. Pursuant to the

said order, a warrant of attachment was issued to the Indian Overseas Bank, Nandyal Branch, on 10.01.2015. However, the bank informed the Court that the account was not in the name of the respondent but stood in the name of the learned III Additional District Judge, Nandyal, Kurnool District, who had ordered withholding of the said amount as the same was attached in O.S.No.20 of 2011 pending on his file till further orders. Thereupon, the petitioner/plaintiff filed I.A.No.245 of 2015 in the suit under Order 38 Rule 5 CPC r/w Order 21 Rule 52 CPC to pass an order of attachment before judgment by requiring the learned III Additional District Judge, Nandyal, to withhold an amount of Rs.1.00 Crore which was deposited to the credit of O.S.No.20 of 2011. The trial Court passed the following order in this I.A. on 13.03.2015.

“..Under the above circumstances, it is clear that Respondent has no objection in respect of contention raised by the Petitioner. Considering the circumstances, issue order to attachment of the amount lying in SB Account bearing No.511300392 and 511300391 of defendant in Indian Overseas Bank, Nandyal. Address a letter to concerned Bank. Issue Garnishee order withholding. Call on 17-04-2015.”

Thereafter, O.S.No.1505 of 2014 was decreed with costs under judgment dated 30.06.2015 directing the respondent herein to pay the sum of Rs.1.00 Crore with interest at 12% per annum from the date of borrowal till the filing of the suit and at 6% per annum from the date of the suit till the date of realization. Seeking execution of this judgment and decree, the petitioner/plaintiff filed E.P.No.10 of 2015. In the context of the said execution proceedings, the petitioner/plaintiff filed EASR No.994 of 2016 under Order 21 Rule 52 CPC to call for the amount already attached and lying to the credit

of O.S.No.20 of 2011 on the file of the learned III Additional District Judge, Nandyal, Kurnool District, *vide* Account Deposit Nos.511300392 and 511300391 in the Indian Overseas Bank, Nandyal Branch, Kurnool District. This application was returned with the endorsement as stated *supra*.

In the light of the fact that there was an attachment before judgment in relation to the amount lying in the specified account deposits, the provisions of Order 38 Rules 11 and 11-A CPC would have application. However, as the amount so attached was already subjected to attachment in relation to O.S.No.20 of 2011 on the file of the learned III Additional District Judge, Nandyal, Kurnool District, the question of priority has to be decided by exercise of power under Order 21 Rule 52 CPC. The application in this regard has to be filed before the learned III Additional District Judge, Nandyal, Kurnool District, and not the learned I Additional District Judge, Ranga Reddy District at L.B.Nagar. In effect, the application in EASR No.994 of 2016 in EP No.10 of 2015 was not maintainable before the learned I Additional District Judge, Ranga Reddy District.

The docket order under revision therefore does not call for interference though it seems to have proceeded on some other ground altogether. The Civil Revision Petition is dismissed. Pending miscellaneous petitions, if any, are also dismissed. No order as to costs.

SANJAY KUMAR, J

18th NOVEMBER, 2016

PGS