

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4614 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the petitioner-defendant is directed against the order, dated 18.07.2017, of the learned XXVII Additional Chief Judge, City Civil Courts, Secunderabad, passed in IA.No.610 of 2017 in OS.No.53 of 2017.

I have heard the submissions of the learned counsel for the petitioner-defendant. I have perused the material record.

To begin with, it is to be noted that in a suit for recovery of money, the plaintiff filed the afore-stated Interlocutory Application under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, seeking attachment before judgment of the properties of the defendant, which are situate outside the territorial jurisdictional limits of the trial Court. The trial Court, having noted that counter is not filed by the defendant despite granting opportunities, allowed the application by passing a cryptic order and directed attachment of the petition schedule properties and posted the matter to 08.08.2017. Aggrieved thereof, the petitioner-defendant is before this Court.

Learned counsel for the petitioner submits that counter could not be filed in the circumstances stated in the grounds of revision and that the trial Court, without giving an opportunity, passed the order on the same day on which the right to file counter is forfeited and that the said non-speaking order is also contrary to law.

A perusal of the order impugned shows that the trial Court did not direct the defendant either to show cause as to why she shall not furnish security or to furnish security before ordering attachment as envisaged

under Rules 5 & 6 of Order XXXVIII. Sub-Rule 4 mandates that an order of attachment made without compliance of provisions of sub-rule 1 shall be void. Further, when the property is outside the territorial limits of the Court, the Court is required to follow the procedure postulated under Section 136 of the Code and is required to order attachment by a prohibitory order, but, that procedure is also not followed, according to the submissions of the learned counsel for the petitioner-defendant. However, learned counsel for the petitioner-defendant fairly submits that the defendant is not disputing that he is the owner of the properties which are sought to be attached.

In *Chairman and M.D., R.P.N.N. Ltd. v. Rambachane Singh*, [AIR1998AP127 (DB)], a Division Bench of this High Court held at para 3 of the judgment as follows:

"Such an order is not to be passed in a routine manner merely for the asking for it but that the Court has to be satisfied on tangible materials placed before it that there are attempts at alienation and that the steps are taken so as to delay or obstruct the judgment that may be ultimately passed against the defendant. Before passing an order, the defendant is first of all to be called upon to furnish security in the shape of specific sum to produce and place at the disposal of the Court, when required, the property specified by the plaintiff in his petition or such portion of it as may be sufficient to satisfy the decree or call upon him to show-cause as to why he shall not furnish security. But such an order can be passed only after the primary satisfaction of the obstructive conduct of the defendant. The ultimate attachment order can be passed only if the defendant either fails to show-cause why the security shall not be furnished or fails to furnish the security as required."

On the above analysis and as the order impugned was passed contrary to the procedure envisaged under law, this Court is satisfied that this revision can be disposed of at the stage of admission by remitting the matter to the trial Court for disposal afresh in accordance

with the procedure established by law. However, while so remitting the matter it is necessary to protect the interests of both the parties to the suit.

In the result, the Civil Revision Petition is allowed and the order, dated 18.07.2017, of the learned XXVII Additional Chief Judge, City Civil Courts, Secunderabad, passed in IA.No.610 of 2017 in OS.No.53 of 2017 is set aside and IA.No.610 of 2017 in OS.No.53 of 2017 is remitted to the trial Court for disposal afresh in accordance with the procedure established by law. However, to protect the interests of both the parties, the defendant is restrained from alienating the subject property till the trial Court disposes of the aforesaid application afresh as directed in this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

12.09.2017
Vjl