

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3682 of 2017

ORDER:

This petition is filed under Article 227 of Constitution of India challenging the docket order dated 06.02.2017 in I.A.No.1527 of 2016 in O.S.No.735 of 2016 passed by the IX Addl. Chief Judge, City Civil Court, Hyderabad raising attachment before judgment over the property i.e. Flat No.101 shown in the schedule property within the four boundaries on furnishing security for the debt due to the bank by depositing bond FD/1/170031, dt.03.02.2017 for Rs.12,44,000/- issued by Corporation Bank, Tarnaka Branch, Hyderabad.

2. The petitioner filed the present revision on the ground that the trial Court did not pass reasoned order, though the petitioner filed counter in I.A.No.1527 of 2016 on the first day, but under compelling circumstances, he furnished security for the suit debt, that apart the notices ordered to the first defendant are not yet served and that they were returned even on today. Therefore, it is a collusive suit and raise the attachment before judgment, requested to direct the trial court to pass detailed order.

3. The first respondent filed suit for recovery of amount on the basis of promissory note executed and filed I.A.No.1527 of 2016 under Order XXXVIII, Rule 5 r/w section 151 CPC for attachment of immovable property before judgment and a notice was issued calling for security for the suit amount within two days, and in the event of failure to furnish the security, the property shall be

attached. On receipt of notice, the petitioner furnished security depositing bond FD/1/170031 dt.03.02.2017 for Rs.12,44,000/- issued by the Corporation Bank, Tarnaka Branch, Hyderabad as security for the suit amount. When the petitioner himself furnished security for the suit amount, the court is not required to pass any detailed order since the court already raised attachment before judgment over the property. Therefore, the contention that the court did not pass any detailed order would not stand to any legal scrutiny since the attachment was already raised on furnishing security. Therefore, on this ground the order impugned cannot be set aside or reversed by this Court while exercising powers under Article 227 of Constitution of India.

4. Yet, another contention raised by the learned counsel for the petitioner is that the suit is between first defendant and the plaintiff and the notices sent to the first defendant are not yet served and they were returned on many occasions. While deciding the legality of the order passed under Order XXXVIII Rule 5 of CPC, this Court cannot decide the collusion between the plaintiff and the defendant in the main suit and return of suit summons ordered to the first defendant is not a ground to set aside the order, that apart, such contention is beyond the scope of the petition filed under Order XXXVIII Rule 5 of CPC, consequently, it is not a ground to set aside or reverse the order passed by the trial Court in I.A.No.1527 of 2016. Hence, I find no ground to interfere with the impugned order passed by the trial Court by exercising powers under Article 227 of the Constitution of India. Hence, the revision is devoid of merits and deserves to be dismissed.

5. In the result, revision petition is dismissed at the stage of admission. There shall be no order as to costs.

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

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M. SATYANARAYANA MURTHY, J

Date:28-07-2017

Ccm



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