

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.6358 of 2016

ORDER:

This C.R.P is filed by the petitioner/defendant aggrieved by the order dated 24.11.2016 in I.A.No.681 of 2016 in O.S.No.88 of 2016 on the file of Additional Senior Civil Judge, Kadapa, whereby the trial Court directed the petitioner/defendant to give security to the suit amount on or before 05.12.2016, failing which, the interim attachment of the earned leave salary of respondent made by the said Court in its order dated 17.03.2016 would be made absolute.

2) The main contention of learned counsel for petitioner/defendant is that as per Order XXXVIII Rule 5 CPC, serving of show cause notice to the petitioner/defendant is mandatory before issuing a prohibitory order lest the order should be vitiated. In the instant case such a show cause notice had not preceded and the petitioner/defendant was not served upon either the show cause notice or the interim attachment order. Therefore, the interim attachment ordered by the trial Court became null and void. His further contention is that when this fact was brought to the notice of the trial Court during the enquiry, the trial Court without considering the same has passed a further order directing him to furnish a security to the suit amount on or before 05.12.2016 as otherwise the interim order dated 17.03.2016 attaching his earned leave salary would be made absolute.

3) Per contra, learned counsel for respondent/plaintiff while supporting the impugned order argued that show cause notice and the interim attachment order were promptly served on the respondent on the petitioner/defendant and there was no procedural violation in this regard and the trial Court upon perusal of the record, has found that the show cause notice and the interim attachment were served on petitioner/defendant and accordingly directed him to furnish security to the suit amount by giving time till 05.12.2016 failing which, the interim attachment order earlier passed on 17.03.2016 would be made absolute. He thus argued that there are no bonafides in the CRP.

4) The point for determination in this CRP is:

“Whether there are merits in the CRP to allow?”

5) **POINT:** Order XXXVIII Rule 5 CPC governs attachment before judgment. 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."

The above provision thus shows that the Court while passing the interim attachment order shall direct the defendants within a time to be fixed by it either to furnish security in such sum as may be specified in its order or to appear before it and show cause why he could not furnish security. Order XXXVIII Rule 5(4) CPC says that if an order of attachment is made without complying with the provisions of sub-rule(1) such an attachment shall be void.

6) Coming to the impugned order, the trial Court observed that the record would reveal that the notice was served on the respondent and also the prohibitory order. It implies that the bailiff of the Court has served upon the respondent both the notice under Order XXXVIII Rule 5 CPC and also the conditional attachment order. In that view of the matter, it does not lie in the mouth of the petitioner/defendant to

contend that no notice and conditional attachment order were served on him. Added to it, upon the direction of this Court, the respondent/plaintiff filed certified copy of order in I.A.No.681 of 2016 in O.S.No.88 of 2016 wherein the served report of Process Server is affixed. It reads that the Process Server of the City Civil Court, Hyderabad upon solemn affirmation stated on oath that he received the order / notices / summons for service on 20.04.2016 and proceeded to the address given there and served the order / notices/ summons along with the copies to the person concerned. Therefore, the record as observed by the trial Court would show that the notice as well as interim attachment order were served upon the petitioner/defendant duly informing the directions of the Court to the petitioner/defendant. As such, this Court finds no merits in the contentions of the learned counsel for petitioner.

7) Accordingly, this Civil Revision Petition is dismissed. No costs.

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

U.DURGA PRASAD RAO, J

Date: 21.04.2017
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