THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4426 of 2016

ORDER:

The unsuccessful petitioner-plaintiff filed this civil revision petition, under Article 227 of the Constitution of India, assailing the orders, dated 26.04.2016, of the learned I Additional Chief Judge, City Civil Court, Secunderabad, passed in IA.No.584 of 2016 in OS.No.37 of 2016.

2. I have heard the submissions of Sri V.V.N. Narayana Rao, learned counsel for the petitioner-plaintiff. Though the sole respondent-defendant is served with notice, he did not enter appearance. I have perused the material record.

3. The introductory facts, in brief, are as follows: - 'The plaintiff brought the suit against the defendant for recovery of money in a sum of Rs.22,00,000/- and odd with interest and costs. The defendant is resisting the said suit. In the said suit, the plaintiff filed the afore-said IA.No.584 of 2016 under Order XXXVIII Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 ['the Code', for short] seeking attachment before judgment of movables viz., Two Big Refrigerators (Bottle Coolers); One Big cash counter; One Big selling counter; six bottle racks; and, stocks-in-trade, situate at M/s. Sai Sri Wines at Parsigutta, Secunderabad. The defendant resisted the said application by filing a counter. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the plaintiff. Therefore, the plaintiff is before this Court.'

4. The case of the plaintiff, in brief, is this: - 'The plaintiff and the defendant along with three others entered into a partnership, on

20.04.2014, under the name and style 'Sri Lakshmi Wines' at Warasiguda, Secunderabad, for the purpose of carrying on business in liquor in the State of Telangana. A partnership deed was also entered into and it was in force till 30.06.2015. The partnership firm stood dissolved by afflux of time. During the course of the said partnership business, the defendant committed several acts of waste and misappropriated funds and failed to render accounts to the other partners including the plaintiff. On account of the said acts and conduct of the defendant, the plaintiff suffered huge loss. The plaintiff thereafter obtained an individual license by participating in auction conducted by the Government pursuant to the Gazette notification, dated 07.07.2015, and paid the entire licence fee of Rs.22,50,000/- and permit fee of Rs.50,000/-. The said licence *vide* licence bearing No.71/2015-16/SBD, dated 14.07.2015, was obtained by the plaintiff as a sole proprietor. By the said licence, he was authorised to conduct business in liquor in the same premises situate at Warasiguda. He entered into a fresh rental agreement with the owner of the premises and commenced his own business under the name and style 'M/s.Sainath Wines'. The defendant approached the plaintiff and requested to employ him on a monthly salary of Rs.55,000/- from 15.01.2015. Despite the bitter experience of the plaintiff with the defendant, as the plaintiff is an aged person and as his health was not permitting to move around and conduct wine business, he believed the defendant as he promised to remain faithful and transparent in business and work honestly and also render perfect accounts. In the compelling circumstances, the plaintiff employed the defendant in his said M/s. Sainath Wines. Thus, the relationship between the plaintiff and defendant is that of an employer and an employee. The plaintiff also submitted an affidavit to the Excise Department stating that the defendant is an employee and is entitled to conduct day to day transactions. The defendant was also allowed to handle certain cash transactions related to sales of miscellaneous items. The defendant agreed to pay Rs.1,50,000/- per month to the plaintiff towards profits derived from the sales of miscellaneous items like water packsets/ bottles/cool drinks, disposable glasses and finger food etcetera in respect of which he was allowed to handle cash transactions. However, the defendant failed to keep up his words and promise and misappropriated and misused funds to a tune of Rs.15,54,639/- while conducting the liquor business of the plaintiff. The audit report also revealed the said fact. The defendant did not handover the misappropriated money to the plaintiff and also failed to pay Rs.1,50,000/- per month towards profits derived from the above said miscellaneous sales and embezzled an amount of Rs.19,29,639/-. Therefore, the plaintiff was compelled to issue a legal notice calling upon the defendant to pay the amount due and payable to the plaintiff. The defendant having received the notice neither issued a reply nor paid the amount due to the plaintiff. On enquiries, the plaintiff came to know that the defendant started another business in wines under the name and style 'M/s.Sai Sri Wines' by investing the amounts which the defendant derived from the business of the plaintiff. Thus, the defendant misappropriated the amounts of the plaintiff's business and invested the same in his said business and thus committed offences of cheating, misappropriation of amounts, criminal breach of trust etcetera. The plaintiff lodged a compliant with police of Chilkalguda and initiated criminal action against the defendant. Thereafter, a crime was registered against the defendant and the police are investigating into the said crime. In the circumstances, the plaintiff filed the suit against the defendant. The defendant was indebted to a number of creditors including the plaintiff. With an illegal intention to avoid payments to all his creditors including the plaintiff, the defendant is planning to close his business or transfer the same to third parties. He is intending to do so with an illegal intention and he is also planning to leave the jurisdiction of the Court. The said facts came to the knowledge of the plaintiff through the people of the locality. Hence, the petition is filed for attachment before judgment of the movables mentioned in the petition.'

5. The defendant filed a counter denying each and every allegation made by the plaintiff against him and *inter alia* urged that he is not liable to pay any amounts much less the suit amount to the plaintiff. In the said counter, the defendant further stated as follows: 'The allegation that this defendant is trying to close the business or transfer the same to third parties or leave the jurisdiction of the Court are all absolute lies. There is no iota of truth in the said allegations. The said allegations are baseless and are invented with an intention to succeed in the application filed for attachment of moveables. The defendant is not liable to pay any amounts to any person and he is not indebted to a single person. He has not cheated any person till date. This defendant succeeded in the auction in which many people participated and he is running his own business successfully. Therefore, there is no question of the defendant selling or transferring the said business to third parties and leaving the jurisdiction of the Court. The business of this defendant is a partnership business and he cannot alone sell away the said business to third parties. In the said partnership business being carried on by the defendant and his partners, third parties made huge investments. The

plaintiff has not demonstrated his pleaded case by placing cogent and convincing documentary evidence in support of his claims and apprehensions. On the allegations made by the plaintiff no relief can be granted to him.'

6. Learned counsel for the plaintiff made submissions in line with the pleadings of the plaintiff. While assailing the order of the trial Court as a not properly reasoned and unsustainable order, he *inter alia* submitted that in the impugned order the trial Court made an erroneous observation to the effect that there is a probability that the application for attachment is filed by the plaintiff as a leverage for coercing the defendant to settle the claims and that the present petition is filed by making reference to certain instances and bloating the doubtful claims in order to obtain the orders of attachment before judgment and force the defendant for out of court settlement under threat of attachment. He submitted that the trial Court ought not to have made such far reaching observations in respect of the suit claim while deciding an application filed for attachment before judgment of the movable property. He also submitted that the said observation is liable to be expunged as allowing the same to be on record causes great prejudice to the plaintiff and affects the claim of the plaintiff genuinely made in the suit.

7. I have given earnest consideration to the facts and submissions. In the application filed by the plaintiff seeking attachment before judgment of movables of the defendant's business including stock-in-trade, the plaintiff re-iterated the plaint averments made in support of the suit claim and further alleged that the defendant is heavily indebted to various creditors including the plaintiff and that to avoid payments to all his creditors including the plaintiff he is planning to close his business

or transfer the same to third parties and leave the jurisdiction of the Court. Except those allegations no other allegations are made in the plaint. The defendant contends that his business is running successfully and that it is a partnership business and that he alone cannot alienate or transfer the business and that there was no necessity for him to sell or transfer his business to third parties and leave the jurisdiction of the Court and that his partners made huge investments in the running business and that he cannot alone sell his business, which is a partnership business. It is pertinent to note that the trial Court also observed in its orders that the business of the defendant being a business in liquor is governed by the provisions of the Prohibition & Excise Act and obviously the licence is not transferable and that it is subject to the provisions of law governing the grant of such licenses. On the scrutiny of the pleadings and contentions, it is apparent that in the affidavit filed in support of the application seeking attachment before judgment of the movables of the defendant's business, the plaintiff did not even allege that the defendant is not having any immovable properties; and, he did not name the 3rd parties from whom he came to know that the defendant is planning to close the business or transfer the same to 3rd parties with an illegal intention to deprive his creditors and that he is planning to leave the jurisdiction of the Court. Even the names of the alleged creditors of the defendant are also not stated in the affidavit filed in support of the petition. On the contrary, the defendant contends that his business is running successfully and that it is a partnership business and that in the said business the partners made huge investments.

8. On the above analysis, this Court finds that no valid and sufficient grounds are pleaded and established in support of the relief

claimed by the plaintiff and that no *prima facie* case is made out by the plaintiff for granting the relief. Viewed thus, this court finds that the trial Court is justified in dismissing the application of the plaintiff.

9. Before parting, as rightly pointed out by the learned counsel for the plaintiff the court below ought not to have made the following observations in the impugned order: 'Thus, upon the scrutiny of the allegations made by the petitioner/plaintiff against the respondent, there is a probability that as a leverage for coercing the respondent/defendant to settle the claims of the petitioner/plaintiff, the present petition appears to have been filed with reference to instances bloating the doubtful claims in order to obtain the orders of attachment before the judgment and force the defendant for out of court settlement under threat of attachment'. Such observations will have far reaching consequences as the same will have a bearing on the merits of the issues that may be settled for determination in the suit. Hence, as rightly urged by the learned counsel for the plaintiff, the afore-stated observations are liable to be expunged from the orders of the trial Court.

10. Accordingly, the Civil Revision Petition is dismissed. However, the afore-stated observations in the order impugned of the trial Court shall stand expunged.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

28.08.2017
Vjl