THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5572 OF 2015

ORDER:

The unsuccessful petitioner/plaintiff filed this civil revision petition, under Article 227 of the Constitution of India, assailing the order, dated 05.10.2015, of the learned II-Additional District Judge, Visakhapatnam, passed in I.A.No.1000 of 2015 in O.S.No.488 of 2015 filed under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, for attachment before judgment of the property viz., 'iron plate coils', more fully described in the schedule annexed to the petition.

2. I have heard the submissions of Sri K. Jyothi Prasad, learned counsel for the petitioner/plaintiff (hereinafter referred to as 'the plaintiff') and Sri G.Rama Gopal, learned counsel for the respondent/defendant (hereinafter referred to as 'the defendant').

3. I have perused the material record.

4. The facts which are necessary to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the defendant, a Limited Company, for recovery of money in a sum of Rs.1,25,19,006/- & odd with subsequent interest and costs. In the said suit, the plaintiff filed the aforestated interlocutory application for attachment before judgment of the petition schedule property viz., ‘iron plate coils’ which are stated to be of a value of more than Rs.1,30,00,000/-.

5. The defendant resisted the said application.

6. At the hearing before the trial Court, Exs.P.1 to P.6 and Exs.R.1 to R.5 were marked. No oral evidence was adduced. On merits and by the order impugned in this revision, the trial Court dismissed the petition. Therefore, the plaintiff is before this Court.

7. Learned counsel for the plaintiff would submit as follows:

The suit is filed for recovery of a huge sum of money exceeding Rs.1,25,00,000/-. Along with the suit, the plaintiff filed all supporting documents. The defendant Company, without paying the amount due to the plaintiff, started clearing its stock from its premises on a war footing. Therefore the proprietor of the plaintiff company has been spending sleepless nights. The defendant is slowly proceeding for closing the operations in Visakhapatnam. Hence, the plaintiff was constrained to seek attachment of the property of the defendant company. If the plaint schedule stock is shifted by the defendant and it is disposed of, the plaintiff would suffer serious irreparable loss. The plaintiff filed the application for appointment of commissioner to take an inventory of the stock of the defendant company. The plaintiff also filed third party affidavits in support of its contentions. If the property is not attached, the plaintiff will not be in a position to realize the amount of the decree that may ultimately be passed in the suit. The trial Court ignored the said facts and dismissed the application filed by the plaintiff for attachment before judgment. The trial Court without properly appreciating the facts, erroneously relied upon Exs.R.1 to R.4 and came to a conclusion that the defendant company's financial position of sound. The trial Court ought to have seen that if the defendant company removes the petition schedule property and closes its operations at Visakhapatnam and disposes off the petition schedule property, the plaintiff may not be in a position to realize the fruits of the decree that may ultimately be passed and the plaintiff would suffer serious loss. The trial Court ought to have seen that when an *ex parte* order, dated 24.07.2015, was passed directing the defendant to furnish security within 72 hours, the security was offered after lapse of 72 hours and that therefore the trial Court ought to have ordered attachment before judgment to protect the interest of the plaintiff.

8. Per contra, the learned counsel for the defendant company would submit as follows:

Though the defendant company was earlier doing very well, under certain circumstances, it became a sick unit. Therefore a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, (Act 1 of 1986) was filed on 19.06.2015 before the Board for Industrial and Financial Reconstruction (BIFR) and the said reference was registered as Case No.119 of 2015 as per order dated 08.09.2015 of the Secretary of the said Board. It is an undisputed fact that as per the decision of the Board, the defendant Company is restrained from disposing off or alienating in any manner any fixed assets of the Company without the consent of the Board. Thus, the proceedings under the said Act 1 of 1986 were initiated in respect of the defendant Company. Hence, no further proceedings before a Civil Court shall be proceeded with and all the proceedings before the Civil Court shall stand suspended. Therefore, the revision has no merit and the revision is liable to be dismissed as it is now impermissible to pass any orders of attachment or any further orders in the civil proceedings.

9. In reply, the learned counsel for the plaintiff would submit as follows: 'At the time of hearing of the attachment application before the trial Court, the defendant company produced documents to show that the defendant company is solvent and that it is not in dire straits. In fact, the trial Court also observed in its orders that the documentary evidence produced by the defendant company shows that it is in a sound financial position. The defendant company having thus made false representations before the trial Court, got dismissed the application of the plaintiff filed for attachment before judgment. And, immediately thereafter, the defendant company sought reference under the provisions of the Act 1 of 1986 and got initiated a case under the provisions of the said Act by projecting it as a sick industrial company. The defendant company thus played fraud on the Court.

10. On a plain consideration of the above facts and submissions, it is obvious that proceedings under the Act 1 of 1986 were initiated in respect of the defendant company and that an enquiry under the provisions of the said Act 1 of 1986 is pending. In that view of the matter, a suit of the present nature of the plaintiff against the defendant company for recovery of money shall not be further proceeded with, except with the consent of the Board or that of the appellate authority, in case, an appeal is pending. This is the clear mandate of Section 22 of Act 1 of 1986. The relevant provision of the said Section reads as under.

> **Where in respect of an industrial company, an enquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation of where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and Articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings far the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the Industrial company or of any guarantee in respect of any loan or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be the Appellate Authority.**

In that view of the matter, the civil proceedings shall not be proceeded with any further and hence, this Court finds that the civil revision petition is liable for dismissal.

11. Accordingly, the civil revision petition is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed. No costs.

M.SEETHARAMA MURTI, J

06th January, 2017
MAR/RAR