

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.3070 of 2017

ORDER:

The Revision arises out of an *ex parte* order passed by the trial Court directing the petitioner to furnish security to the extent of the suit claim within 3 days and upon his failure to do so, to attach the property.

2. Heard Mrs. G. Jhansi, learned counsel for the petitioner and Mr. D. Anil Kumar, learned counsel for the respondent.

3. The respondent-plaintiff filed a suit for recovery of a total amount of Rs.65,00,2000/- together with interest and costs, on the basis of 32 promissory notes. Along with the plaint, the respondent also filed an application in I.A.No.674 of 2017 for attachment before judgment.

4. Taking up the application on 5-6-2017, the Court below passed an *ex parte* interim order, the entirety of which reads as follows:

"I have heard the learned counsel for the petitioner. I have perused the case record. Considering the facts stated by the petitioner and in the interest of justice the respondent is directed to furnish security to the extent of suit amount within three days from the date of receipt of the notice, failing which attach the schedule property. So issue conditional attachment order and also urgent notice to the respondent through court and RP. Call on 05-07-2017."

5. Aggrieved by the said order, the defendant is before me.

6. It is long settled that the power under Order 38 Rule 5 of the Code of Civil Procedure is drastic and extraordinary and hence, should not be exercised mechanically or merely for the asking. The

power should be exercised sparingly and strictly in accordance with the Rule. Instead of multiplying the authorities on the point, it is sufficient to refer to the decision in **Raman Tech. & Process Engg. Co. and another v. Solanki Traders**¹.

7. I do not wish to go into the averments contained in the affidavit in support of the application for attachment, as the same may prejudice the case of the respondent. This is why I have confined my discussion only to the manner in which the trial court passed the above order. The above order does not satisfy the pre-requisites for the grant of an order of attachment. The Court below ought to have issued a notice to show cause and thereafter passed an order directing furnishing of security, unless an extraordinary circumstance had been brought to the notice of the Court. Assuming that an extraordinary situation was there, the same should be reflected in the order of the trial Court. Therefore, the above order of attachment cannot stand scrutiny.

8. The learned counsel for the respondent forcefully contended that 3 days time was granted to the petitioner to furnish security and that only after his failure, attachment was ordered and that the suit claim is clearly borne out by the promissory notes and the dishonoured cheques.

9. As I have pointed earlier, I am not going into the merits of the claim of the respondent. The manner in which the trial Court passed the order of attachment, is clearly contrary to the mandate of law as pronounced by the Supreme Court.

¹ (2008) 2 SCC 302

10. Hence, the Civil Revision Petition is allowed, the impugned order is set aside and the matter is remanded back to the trial Court. The petitioner shall file a counter to the application for attachment on 19-07-2017, the date on which the case now stands posted. Thereafter, the Court below shall hear both parties, keep the mandate of law in mind and then dispose of the application for attachment in accordance with law.

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

V. RAMASUBRAMANIAN, J

Date: 07-07-2017

Ksn

