

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3336 of 2017

ORDER:

1) The petitioners, who are the plaintiffs in O.S.No.37 of 2012, filed the present Civil Revision Petition under Article 227 of the Constitution of India, assailing the order dated 30.03.2017 passed in I.A.No.183 of 2012 in O.S.No.37 of 2012 on the file of the Principal Senior Civil Judge, Chittoor, wherein an application filed under Order 38 Rule-5 and Section 136 (1) of C.P.C. seeking attachment of bank accounts pending disposal of the suit, was dismissed.

2) For the sake of convenience, the parties herein be referred to as arrayed in the suit.

3) The plaintiffs filed the above suit for recovery of Rs.9,40,230/- from defendant Nos.1 and 2. Defendant No.1 is a paramount marketing corporation, promoted by defendant No.2. Defendant No.2, who is having full control over the management of defendant No.1. It is said that defendant No.2 induced the plaintiffs to invest money into the defendants' business, promising the plaintiffs to get good benefits. Defendants claimed to have floated different schemes and brochures explaining the same came to be issued in the name of defendant No.1, for each of the scheme, containing the terms and conditions of the said schemes. The plaintiffs claim to have

invested Rs.1,30,000/- in some schemes and Rs.1,34,000/- in some other schemes, totaling to Rs.9,40,230/-. As both the defendants failed to perform their part of contract by not making repayments as agreed upon, a suit came to be filed to direct the defendants to pay a sum of Rs.9,40,230/- with interest from the date of filing of suit. Pending the suit, I.A.No.183 of 2012 came to be filed requesting the Court to attach the properties of the defendants, as they are planning to close down their businesses with a malafide intention to cheat the plaintiffs and others.

4) A counter came to be filed by defendant Nos.1 and 2 opposing the same. It was contended that the accounts which were sought to be attached, have already been frozen and taken into account of the Special Court constituted under the TNPID Act cases, as such the question of attachment of the above amounts would not arise.

5) Defendant No.3, the Axis Bank filed counter stating that the account numbers mentioned in the order of attachment are freezed pursuant to the order dated 07.05.2010 of Central Economic Offences Wing Madurai and as per the order dated 02.02.2017 passed by the Special Judge, Special Court under TNPID Act Cases, Madurai, the Bank has withdrawn the amounts lying in three accounts and sent the same to the said Court. Details of the withdrawal and operation of the bank accounts were enclosed along with the counter.

6) After considering the documents and the counters filed by the defendants, the trial Court dismissed the application. Challenging the same, the present revision came to be filed.

7) As seen from the impugned order, ground on which the application came to be rejected was on the basis of the counter filed by defendant No.3, wherein it was stated that the accounts referred to in the petition schedule property were already withdrawn on 08.02.2012 and sent to the Special Court under TNPID Act Cases, Madurai. Since the amounts were already withdrawn and sent to the said Court, the trial Court found that there was no merit in the application and accordingly dismissed the application.

8) Learned counsel for the petitioners mainly contended that though the counter filed by defendant No.3, that the amounts lying in three accounts only were sent to Special Court under TNPID Act cases, Madurai in the month of February, 2012, but strangely the trial Court rejected the application in toto. According to him, the trial Court ought to have attached the remaining accounts leaving the said three accounts in which the amount was transferred to Special Court. He further submits that at least the interest generated from the amount lying in the freezed may be protected.

9) Learned counsel for respondent Nos.1 and 2 would submit that the suit itself is not maintainable as no properties are situated within the jurisdiction of the said Court. He relied upon

the judgment of the Apex Court in *Dashrath Rupsingh Rathod v. State of Maharashtra and another*¹ in support of his pleas.

10) It is also brought to the notice of the Court that the I.A. came to be filed before the trial Court questioning the very maintainability of the suit and such a plea was taken in the written statement but without considering the same, the trial Court is trying to proceed with the case.

11) This Court is not inclined to go into the said aspect, namely as to whether the suit is maintainable or not. It is for the defendants to take necessary steps, in accordance with law, if the suit is not maintainable.

12) The question now is whether the request of the petitioners for attachment of the bank accounts can be accepted.

13) As seen from the record, out of 19 accounts, the amount lying in three accounts was already sent to the Special Court constituted for TNPID Act Cases, Madurai by way of demand drafts in the month of February, 2012. Insofar as other accounts are concerned namely accounts mentioned in S.Nos.4,5,6,7, 12, 13, 14, 15 of the schedule to the counter, they were closed in the year 2009 and 2012 itself, whereas the other accounts referred to in S.Nos.8, 9, 10, 12, 16 and 19 were freezed, pursuant to the order dated 07.05.2010 passed by the Central

¹ (2014) 9 SCC 129

Economic Offences Wing, Madurai. Therefore, when the accounts were already freezed pursuant to an order passed by Central Economic Offences Wing, Madurai, this Court can order attachment of the said accounts to the extent of money to be recovered by the plaintiffs.

14) Even if the total amount of money referred to in accounts at S.Nos.8, 9, 10, 11, 16 to 18 is taken into consideration it would not be morethan Rs.1,75,000/- . Learned counsel for the petitioners mainly relied upon Section 63 and Order XXI Rule 52 of C.P.C. to show that the Court has got power to attach the accounts.

15) In order to appreciate the same it would be useful to refer to Order XXI Rule 52 of C.P.C., which reads as under:

“52. Attachment of property in custody of Court or public officer:- Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.”

16) A reading of the said provision would clearly show that if the property which is sought to be attached is in the custody of a public officer, the said attachment shall be made after issuing a notice to such Court or officer.

17) Admittedly the accounts were already freezed pursuant to an order passed by the Central Economic Offences Wing, Madurai, and the Central Economic Offences Wing, Madurai was not made a party to these proceedings. Therefore, this Court is of the view that, without hearing the person at whose instance the accounts were freezed, it will not be correct for this Court to attach the accounts. Hence, I see no merits in the revision.

18) Accordingly, the Civil Revision Petition is disposed of, giving liberty to the petitioner to move a fresh application before the trial Court making the Central Economic Offences Wing, Madurai as party to the proceedings, in which event the same shall be dealt with uninfluenced by the earlier order.

19) Miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

03.11.2017
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