

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 02/08/2018****Order delivered on 30/08/2018****WP227 No. 99 of 2015**

- Bhikham S/o Late Shri Vijay Ram, Aged About 59 Years, Occupation - B.S.P Worker, Post Operative Personal No. 137310, Token No. 79302, Department Centring Plant-03 (Operation), Bhilai Steel Plant, Bhilai, Tahsil & District Durg, C.G, Through Managing Director Bhilai Steel Plant, Bhilai, Tahsil And District Durg, C.G. R/o Quarter No. 77/A, Risali Sector, Police Station Newai, Tahsil & District Durg, C.G.

---- Petitioner**Versus**

- Smt.Tulsi Devi W/o Shri Kishan Chandra Aged About 67 Years R/o Quarter No. 02/C, Street N.P.A, Sector 5 Bhilai, Tahsil & District Durg, C.G.

---- Respondents

For Petitioner : Shri Praveen Dhurandhar, Advocate.

For Respondent : Shri Punit Ruparel, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. By the instant writ petition, the petitioner/defendant is challenging the impugned award dated 28.01.2015 passed by 3rd Additional District Judge, Durg, C.G in Civil Suit No. 19B/14, whereby the learned trial Court has allowed the application Under Order 38 Rule 5 of Code of Civil Procedure.
2. Brief facts of the case, are that the respondent/plaintiff filed a suit for recovery an amount of Rs. 3,05,000/-(three lakhs five thousands) on the ground that the petitioner/defendant has taken a lone of Rs.3 lakhs from plaintiff/respondent and executed one promissory note on the same date i.e., 16.08.2013, but the petitioner/defendant has not returned the loan amount within the stipulated period, therefore, legal notice was also sent through advocate on 29.10.2014, but even after receipt of notice loan was not repaid by the petitioner/defendant, thereafter, the suit was filed on 07.11.2014 for recovery of the loan amount. During pendency of the suit respondent/plaintiff after obtaining document under Right to Information Act with regard to the retirement of the petitioner from his service of Bhilai Steel Plant on 31.01.2015 moved an application U/o. 38 Rule 5 of C.P.C with a prayer that the loan amount alongwith expenses should be attached before the Judgment.
3. The petitioner replied to the application that he has not taken any loan amount from respondent/plaintiff and further that no grounds as required under the provisions of U/o. 38 Rule 5 has been pleaded and filed by the plaintiff and only on the basis of mere apprehension the security of the loan amount is demanded. Hence, he prayed for dismissal of the application.
4. Learned trial Court while considering the application U/o. 38 Rule 5 allowed the same and directed for withholding the amount of Rs. 3,05,000/- (subject matter of the suit) until further order and further directed for submitting the security of the amount of Rs. 3,05,000/- within the period of 10 days.

5. It is this order which is under challenge in this petition by the petitioner.
Learned counsel for the petitioner submits that direction for attachment or for submitting the security cannot be ordered on mere asking, it has to be proved by the applicant that the other party is going to dispose of the property or going to remove all or part of the property from the local limits of the jurisdiction of the Court. He further submits that the order of attachment cannot be passed even if the plaintiff proves that he is having prima facie case in his favour.
6. Per contra, learned counsel appearing for respondent/plaintiff argues that there was another two cases of loan transaction between the parties wherein the petitioner/defendant after obtaining the loan failed to return it and, therefore, suit for recovery of loan amount was filed in which compromise decree was passed by Lok Adalat on 16.10.2011. in Case No. 47 B /2011 between Smt.Tulsi Devi Versus Bhikham and in Civil Suit No.9B/2011 between Smt. Tulsi Devi Versus Bhikham, but till date of filing of the application U/o.38 Rule 5 of C.P.C., petitioner/defendant has not complied with the compromise degree and not paid the amount of the degree, therefore, there was very apprehension that the defendant may obstruct and delay the execution of degree that may be passed against him.
7. I have heard the learned respective counsel appearing for the parties and perused the records.
8. Though the application U/o.38 Rule 5 of C.P.C has been loosely drafted and not mentioned the requirements of Rule 5 of Order 38 specifically. Perused the contents of the plaint wherein it has been specifically pleaded that defendant obtained loan amount of Rs. 3 lakhs from the plaintiff/respondent and executed promissory note on the same date, as also the documents i.e. promissory note alongwith the two orders passed by the Lok Adalat on 16.10.2011 in favour of the plaintiff and against petitioner but the same was not complied with by the petitioner/defendant and not paid the amount of

decree. The orders of Lok Adalat are filed as Annexure- R-1 & R-2 alongwith reply but same was not denied by the counsel for petitioner.

9. The fact of the execution of promissory note was not specifically denied by the petitioner/defendant in his reply to application U/o. 38 Rule 5 of C.P.C but he only denies the fact of obtaining loan from the plaintiff/respondents.
10. From perusal of the aforementioned, pleadings and documents available on record, it is evident that there is prima facie case in favour of the plaintiff/respondent and further looking to the earlier compromise degree passed by the Lok Adalat on 16.10.2011, but the same was not complied and the petitioner have not paid the amount of the degree of Lok Adalat till filing of the application U/o. 38 Rule 5 of C.P.C. on 23/01/2005 clearly shows that the petitioner/defendant will delay the execution of the degree that may be passed against him.
11. Undisputedly petitioner was retiring from service on 31.01.2015 and looking to her earlier experience in two money suits against petitioner wherein he did not pay the money even after compromise degree, the application for attachment before judgment was filed by plaintiff on 23.01.2015, so as to protect her interest in the event of the suit is decreed. In such a situation Court exercised jurisdiction U/o. 38 Rule 5 of C.P.C. The Court below looking to the time gap between date of retirement and date on which afore-mention application was considered directed to withheld the loan amount subject matter of suit by employer and granted 10 days time to submit security of the same cannot be faulted with.
12. In view of the above, discussion respondent was able to satisfy the Court that he or she is having prima facie case and further able to show that the intention of the petitioner was to delay the execution of the degree that may be passed against him before the Court.

13. There is no illegality or infirmity in the impugned order warranting interference by this Court. Hence, this petition is liable to be dismissed and is dismissed accordingly.

14. However, the petitioner is at liberty to file application for withdrawal of the amount withheld in office of employer of petitioner after submission of security as directed by learned Court below and the learned Court below will oblige to pass appropriate orders in accordance with law.

Sd /-

(Parth Prateem Sahu)

Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 99 of 2015

Bhikham

Versus

Smt. Tulsi Devi

For pronouncement of order on /08/2018

Judge

/08/2018