

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION**

**NOTICE OF MOTION NO.380 OF 2017
IN
COMMERCIAL SUMMARY SUIT NO.448 OF 2017**

DBM Geotechnics & Constructions Private
Limited ... Applicant

In the matter between :

DBM Geotechnics & Constructions Private
Limited ... Plaintiff
Versus
B. Anjaneyulu ... Defendant

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Ms. Akanksha A a/w Mr. Joshua D'Souza I/b Vigil Juris for the
Applicant/Plaintiff.

Mr. Mayur Khandeparkar a/w Mr. Akhil Sarathy I/b Thodur Law Associates
for the Defendant.

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CORAM : S.C.GUPTE, J.

DATE : 24 JANUARY 2018

P.C. :

. Heard learned Counsel for the parties.

2 This Notice of Motion is taken out for relief in the nature of attachment before judgement under Order 38 Rule 5 of the Code of Civil Procedure 1908. To succeed in an application for attachment before judgement, the Applicant must not only to show that he has a good *prima facie* case, but also that the Defendant is likely to either dispose of his

assets or remove them from the jurisdiction of the court with a view to defeat in decree that may be passed in favour of the Applicant in the suit. As far as this requirement is concerned, it is clear from the record placed before the Court that the Defendant has no assets in Mumbai. His assets are in the State of Andhra Pradesh. Thus, there is no question of removing assets from the jurisdiction of the Court. There is no case made out by the Plaintiff that the Defendant is likely to dispose of any of his assets. Apart from bare averments in the affidavit in support of the notice of motion, nothing is placed on record in that behalf. Accordingly, no order for attachment before judgment or any other order in support of such relief, can be passed in this matter. The Notice of Motion is, accordingly, dismissed. It is made clear that this Court has not applied its mind to the *prima facie* merits of the Plaintiff's case.

(S.C. GUPTE, J.)