

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**  
**CIVIL REVISION PETITION NO. 1741 OF 2018**

**Date: 25.09.2018**

Between :  
VARALAXMI W/o JBRJ Bheem Raj  
Aged about 45 years  
OccBusiness R/o Hyderabad & another

.... Petitioners

and

YELUGAM VEERA SWAMY S/o Venkata Mallaiah  
Occ Business R/o 11-26-18  
Kothawada Warangal

.....Respondent



The Court made the following:

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ORAL ORDER:

This revision is filed against the order of the Principal District Judge, Warangal dated 7.9.2017 in I A No. 842 of 2015 in O.S. No. 56 of 2015 ordering the attachment of property before judgment.

2. Heard learned counsel for revision petitioners Sri P.S.Rajasekhar and learned counsel for respondent Sri Subba Rao Korrapati.

3. The revision petitioners are defendants and respondent herein is plaintiff. For the sake of convenience parties are referred as they are arrayed before the Court below.

4. Plaintiff filed O.S. No. 56 of 2015 praying to grant decree for .19,07,393/- with interest @ 24 % per annum. In the said suit, plaintiff filed I A No. 842 of 2015 under Section 136 read with Order XXXVIII Rule 5 and Section 151 of Civil Procedure Code. Having found that prima facie case is made out by plaintiff, Court below by order dated 3.7.2017 directed the defendants to furnish security for the suit amount by 17.7.2017 or to appear and show cause why they should not furnish security. On receipt of notice, appearance was entered and counter affidavit was filed opposing the prayer sought in the Interlocutory Application. On elaborate consideration of the issue, Court below was pleased to hold that defendants failed to furnish security and that defendants did not have any other property, therefore, if the property is not attached, plaintiff would not be able to enjoy the fruits of the decree, if granted, and property is liable to be attached under Order XXXVIII Rule 6 (1). Though, defendants took the plea that the property was mortgaged to Standard Chartered Bank to secure housing loan, having regard to the provision in Rule 10, learned Judge observed that by attaching the property interest of mortgagor are not affected.

5. When the matter is taken up for consideration, learned counsel for plaintiff raised preliminary objection on maintainability of the revision. According to learned counsel the order of attachment before judgment passed under Rule 6 of Order XXXVIII is applicable under Order XLIII Rule 1 (q) and when remedy of appeal is available, revision is not maintainable.

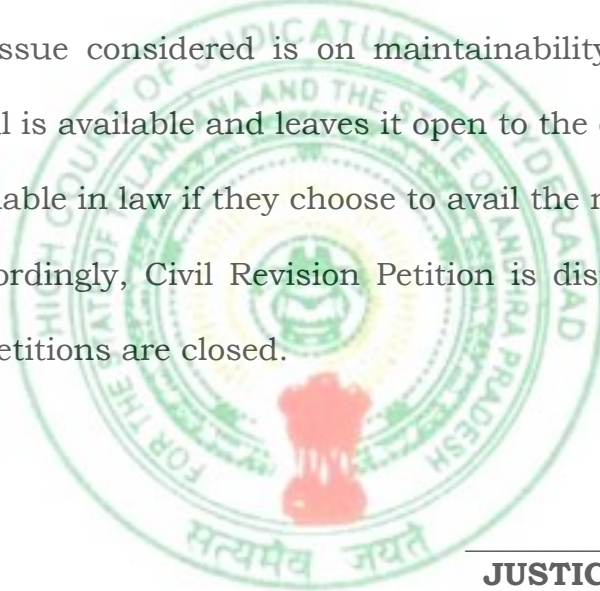
6. In response, learned counsel for defendants sought to contend that the application was filed under Order XXXVIII Rule 5 only and order is also passed under said rule and therefore revision is maintainable as remedy of appeal is not provided against orders under Rule 5.

7. I A No. 842 of 2015 is filed praying to issue direction to defendants to furnish security for the sum mentioned therein within 48 hours, failing which to attach the petition schedule property. As required by Order XXXVIII Rule 5, notice was issued calling upon defendants to furnish security. Defendants failed to furnish security and contested the application. On hearing the parties, the Court was not satisfied with the explanation offered by the defendants on furnishing security and the Court having found that the claim of the plaintiff for attachment of property is genuine, ordered attachment of property before judgment and issued warrant of attachment. Thus, the order passed by the learned Principal District Judge dated 7<sup>th</sup> September, 2017 is an order under Rule 6 and is therefore appealable.

8. Though, this Court has wide amplitude of powers under Article 227 of the Constitution to correct the mistakes committed by Subordinate Courts and entertain revision even when remedy of appeal is available, in the case on hand there is no error of jurisdiction nor there was failure in observing the procedural safeguards as required by Order XXXVIII warranting exercise of extra-ordinary jurisdiction under Article 227 of the Constitution of India subverting remedy of appeal.

9. In the case on hand, as noted above, procedure as required by Order XXXVIII Rule 5 was observed before ordering attachment before judgment. The Court recorded prima facie satisfaction, called upon the defendants to give security or to show cause as to why attachment should not be ordered; heard defendants and having satisfied that in the facts of the case, attachment before judgment is necessarily to be passed, passed the order. Thus, defendants have to avail remedy of appeal provided by Order XLIII Rule (1) (q) of CPC. As defendants have effective and efficacious remedy of appeal as envisaged by Order XLIII Rule (1) (q), the Court is not inclined to entertain revision. Though, several submissions are made on merits, this Court is not entering into that arena as only issue considered is on maintainability of revision when remedy of appeal is available and leaves it open to the defendants to raise all pleas as available in law if they choose to avail the remedy of appeal.

10. Accordingly, Civil Revision Petition is dismissed. No costs. Miscellaneous petitions are closed.



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TVK

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