HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2607 of 2018

ORDER:

1) Assailing the order dated 03.04.2018 passed in I.A.No.1924 of 2017 in O.S.No.168 of 2015 by the IV Additional District Judge, Kakinada, wherein an application filed by the petitioner/plaintiff under Order XXXVIII Rule 5 and Section 151 of the Code of Civil Procedure to direct the Port Officer, Kakinada Port, not to give permission to the Tug named M.V.Bhuvan to leave the jurisdiction of Kakinada Port Office till disposal of the suit in O.S.No.168 of 2015, was allowed, the present Civil Revision Petition is filed by the defendants.

2) The brief facts of the case, as stated in the petition filed by the plaintiff before the trial court, are as under:-

Both the defendants are husband and wife and both of them are partners of a firm named M/s. Supreme Marines. They constructed a vessel by name M.V.Bhuvan. During the construction of the vessel, they approached the plaintiff and requested him to invest some money in the vessel as their funds are exhausted. In view of the prior acquaintance with the defendants, the plaintiff is said to have invested a sum of Rs.15,00,000/- in the construction of the said vessel. Both the defendants entered into a partnership with the plaintiff on 27.06.2013 and a partnership deed was also executed to that effect on the same day. Thereafter, the defendants constructed a Tug with the registration No.3758/AVIB registered at Visakhapatnam. The partnership deed discloses that the plaintiff has 5% share in the above said Tug. As the defendants failed to pay the amount, he filed a suit for dissolution of partnership and for rendition of accounts. The averments in the affidavit show that initially the plaintiff filed I.A.No.1238 of 2015 seeking attachment of the bank account of the firm belonging to the defendants, was ordered. Thereafter, the defendants filed a counter stating that the said amount was required for day to day transaction to run business. Considering the said request, the court raised the attachment, pursuant to which the defendants withdrew the entire amount. Before raising the attachment, the defendants filed I.A.No.1541 of 2015 stating that they have a house RCC slab building with D.No.16-23-65 at Sambamurthy Nagar, Kakinada which is worth about Rs.One Crore and the said building was furnished as a security. But it was subsequently found that the said building was on an equitable mortgage with Tamilnadu Mercantile Bank Limited, Kakinada Branch and the said bank has also issued auction notice due to default in payment of instalments. The plaintiff also filed I.A.No.1442 of 2015 seeking attachment of the house property belongs to 2nd defendant. After hearing both sides, the court was pleased to attach the said property. Subsequently, the plaintiff came to know that the defendants sold away the property on 31.10.2017 to a third party who is an NRI living in U.S.A., by suppressing the attachment. Hence, the present application came to be filed restraining the movements of the Tug.

3) A counter came to be filed opposing the averments made in the petition. It is stated that the plaintiff did not fulfill the requirements of the partnership firm and its features and characteristic of the deed does not show any partnership. It is stated that essentials of partnership deed are absent except the firm name. Hence, pleads that the deed does not recognize the scope and ambit of partnership deed and that no partnership firm exists. It is further stated that the plaintiff is not a partner in the firm and the deed does not fall under the ambit of partnership firm. After considering the rival submissions, the trial court passed the impugned order. Challenging the same, the present revision came to be filed under Article 227 of the Constitution of India.

4) Reiterating the averments made in the counter filed before the trial court, the learned counsel for the petitioners herein would submit that the petitioners/defendants would be put to irreparable loss if the Tug worth about Rs.3 crores is ordered to be stationed at Kakinada itself till the disposal of the suit, which will take long time. According to him, the amount due, if any, is only Rs.15 lakhs with interest, for which detention of a Vessel worth Rs.3 crores is unwarranted.

5) Learned counsel for the respondent/plaintiff would submit that the petitioners have not come to the court with clean hands. He took me through the petition filed before the trial court showing that the earlier attachment of the bank account was raised with a hope that the petitioners would clear the amount, but the entire amount was withdrawn. Though the court ordered attachment of the house property, the same was sold to a third person suppressing the order of attachment. He further placed on record the undertaking memo filed by the first respondent wherein he stated that he will not alienate the Tug registered in Visakhapatnam till furnishing security for the suit amount in the above suit. Though the said memo was filed before the trial court in the month of December, 2017 till today no security was furnished for the said amount. Having regard to the above, he submits that if Tug is allowed to leave Kakinada Port, there is every possibility of it being sold. Hence, pleads that the order under challenge warrants no interference.

6) As seen from the record, the total amount due as per the petition is 26,47,500/- (Rs.15,00,000/- + 11,47,500/- i.e., the share amount of plaintiff from 01.02.2014 to 01.06.2015). The material on record amply establish that; firstly the attachment of the bank account was raised believing the representation of the defendants; Secondly, the house property, which was attached, was also sold to an N.R.I suppressing the order of attachment; and thirdly though the defendants given an undertaking failed to fulfill the same. From the

above, the intention of the defendants is very clear. Learned counsel for the petitioners/defendants now pleads that they are ready to furnish third party security for the amount to be paid and that they will not alienate the vessel till the disposal of the suit. But, I am afraid that the said conditions may not be sufficient as it appears that the defendants have no respect for the orders passed by the court.

7) Hence, the present Civil Revision Petition is disposed of directing the petitioners/defendants to furnish cash security to an extent of Rs.15,00,000/- (Rupees fifteen lakhs only) to the satisfaction of the trial court in O.S.No.168 of 2015 and also furnish a third party security for the balance amount claimed in the suit towards interest. The condition of furnishing cash security and third party security shall be completed as early as possible within a period of eight weeks from today. Until the fulfillment of the above conditions, the order under challenge will remain in force. Further, till the disposal of the suit, the Tug shall not be alienated, altered, damaged or destructed.

8) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:29.06.2018
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