

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO
CIVIL REVISION PETITION NO.5095 OF 2018

ORDER: (per SK,J)

The petitioner is the plaintiff in C.O.S.No.1 of 2018 on the file of the learned Principal District Judge, Visakhapatnam. He filed I.A.No.103 of 2018 therein under Order 38 Rule 5 CPC seeking conditional attachment before judgment of the petition schedule property or to furnish security to the tune of Rs.2.00 crores. By order dated 16.07.2018, the trial Court dismissed the I.A. Aggrieved thereby, the plaintiff is before this Court.

Heard Sri N.Sridhar Reddy, learned counsel for the petitioner-plaintiff, and Sri V.Surendra Reddy, learned counsel for the respondent-defendant.

C.O.S.No.1 of 2018 was filed for recovery of a sum of Rs.1,62,26,666/- along with interest. Apprehending that the respondent-defendant would alienate the petition schedule property to defeat his interest, the petitioner-plaintiff filed the subject I.A. under Order 38 Rule 5 CPC. It is significant to note that the trial Court extracted the observations made by the Supreme Court in RAMAN TECH AND PROCESS ENGINEERING COMPANY V/ s. SOLANKI TRADERS¹. In terms of the law laid down by the Supreme Court therein, it was incumbent upon the trial Court to first satisfy itself that the plaintiff had a *prima facie* case and that there was a reasonable chance of a decree being passed in the suit against the defendant. It was only if the Court formed this *prima facie* opinion that it would go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5 CPC.

¹ (2008) 2 SCC 302

Perusal of the order under revision reflects that the trial Court did not apply its mind to the first prerequisite of considering as to whether the petitioner-plaintiff had made out a *prima facie* case and whether there was a fair chance of his succeeding in the suit. Without recording any finding on this aspect, the trial Court directly went on to the issue of whether the plaintiff required protection under Order 38 Rule 5 CPC. This Court is at a loss to understand as to how the trial Court, having extracted the relevant portion of the judgment in RAMAN TECH AND PROCESS ENGINEERING COMPANY¹, failed to abide by the mandate thereof.

On this short ground, the order under revision is set aside and I.A.No.103 of 2018 in C.O.S.No.1 of 2018 is restored to the file of the trial Court for consideration afresh keeping in mind the aforestated mandate of the Supreme Court. Needless to state, as this is the second round of litigation, the trial Court shall endeavour to dispose of the I.A. expeditiously. Further, as we are informed that certain subsequent developments would also have to be brought to the notice of the trial Court, liberty is given to both parties to place all additional material supported by affidavits before the trial Court with regard to their respective stands.

The civil revision petition is allowed with the above directions. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:28.11.2018

GJ