

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7783 of 2018

ORDER:

This Revision is preferred by the petitioner challenging the order dt.19-11-2018 in I.A.No.1078 of 2018 in O.S.No.2291 of 2018 of the VIII Addl. Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

2. Petitioner herein is defendant in the suit. The said suit was filed by 1st respondent for recovery of an amount of Rs.8,45,212/- with interest @ 18% p.a. from the date of suit till date of realization.

3. Pending suit, the 1st respondent filed I.A.No.1078 of 2018 under Order XXXVIII Rule 5 C.P.C. seeking attachment of the property belonging to petitioner alleging that petitioner owes money to the 1st respondent and if the property is not attached, grave and irreparable loss would be caused to the 1st respondent.

4. On 19-11-2018, the Court below allowed I.A.No.1078 of 2018 and directed the petitioner to furnish security to the extent of Rs.8,45,212/- within one month from the said date or to show cause why security should not be furnished and conditional order of attachment to attach the property would be made, failing which her property would be attached.

5. Assailing the same, this Revision is filed.

6. A Division Bench of this Court in **Yenamala Chandra Reddy Vs. Navvula Chandramouli Naidu and others**¹ referred to Or.XXXVIII. R.5 and 6 and the Form 5 of Appendix F of the First Schedule to the CPC and held:

“16.....

To

The Bailiff of the Court.

Whereas..... has proved to the satisfaction of the Court that the defendant in the above suit.....;

These are to command you to call upon the said defendant.....on or before the... day of ... 19 ... either to furnish security for the sum of rupees.....to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said... and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the...day of...19...., with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this ...day of... 19.....

Judge.”

17. The first part of the form directs the defendant to furnish security in a particular amount or produce and place at the disposal of the Court the said property or its value or such portion of the value as may be sufficient to satisfy any decree that may be passed against him and also requires the defendant to appear and show cause why he should not furnish security. The first part of the form, therefore, is a re-production of the procedure as to notice envisaged by clause (b) of

¹ 1991(II) A.L.T. 343

O. XXXVIII R. 5(1), but the more important part of the form is the second part and this throws considerable light as to what the legislature meant by the words “conditional attachment”. This second part contains a further direction to the Bailiff to attach and it reads as follows;

“...and you are further ordered to attach the said...and keep the same under safe and secure custody until the further order of the Court;”

18. It will have to be noticed from the Form that the first part referred to above and the second part need not be contained in every order passed under Order XXXVIII, Rule 5 C.P.C. This is clear from the word ‘also’ used in Order XXXVIII, Rule 5(3). If the court thinks fit merely to order the defendant to furnish security or show cause why security should not be furnished, the order as drafted in the Form will not contain the second part. It is only where the court thinks that pending further orders, there shall also be an order of attachment, as contemplated by Order XXXVIII, R. 5(3) that the second part of the Form will be included in the directions issued to the bailiff.

19. It is this second type of order that is called an order of ‘conditional attachment’. If the defendant does not comply with the first part of the Form, the bailiff, if so authorised, can invoke the second part of the Form.”

7. It observed that under Order XXXVIII Rule 5 C.P.C. where the defendant shows cause or furnishes the required security, and the properties specified or portion of it has been attached, the Court shall order the attachment to be *withdrawn* or make such other order as it thinks fit. This withdrawal of attachment under Order XXXVIII Rule 6(2) C.P.C. can only be of an order of conditional attachment granted under Order XXXVIII Rule 5(3) C.P.C. In fact, if there could be no conditional order of attachment-without notice to the defendant- there would be no occasion for the defendant to invoke under Order

XXXVIII Rule 6(2) C.P.C. for withdrawal of the attachment. It further held that under Order XXXVIII Rule 6(2) C.P.C. deals with withdrawal of the attachment.

8. A reading of the order passed by the Court below indicates that it is a conditional attachment order regarding the property of the petitioner. Therefore, the petitioner ought to have approached the Court below under Order XXXVIII Rule 6(3) C.P.C. to raise the said attachment and instead of approaching the Court below, she had directly approached this Court by way of this present Revision.

9. Since the petitioner has an effective remedy to get the conditional attachment withdrawn by invoking Order XXXVIII Rule 6(3) C.P.C. by filing application in the Court below, granting liberty to the petitioner to avail the said remedy, this Revision is dismissed as not maintainable. No costs.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-01-2019

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