



RESERVED ON
14.06.2023

PRONOUNCED ON
26.06.2023

A.No.440 of 2023
in C.S.No.13 of 2013

K.KUMARESH BABU,J.

These Applications have been filed seeking to pass an order of attachment before judgment by freezing the accounts with regard to the Judge's summons schedule mentioned accounts standing in the name of the respondent/ defendant and maintained by him.

2.Heard Mr.V.Manohar, learned counsel appearing for the applicant and Mr.R.Guru Dhananjay, learned counsel appearing on behalf of the sole respondent and perused the materials available on record before this Court.

3.The suit had been initiated for recovery of a sum of Rs.1,94,85,112/- (Rupees One Crore Ninety Four Lakhs Eighty Five Thousand Eleven Hundred and Twelve only) towards the principal and interest on the amount withdrawn from the plaintiff and also for a direction



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to direct the defendant to render true and proper accounts from the period of January 2012 till the date of determination of the business run in the name of Orwell Travel Services.

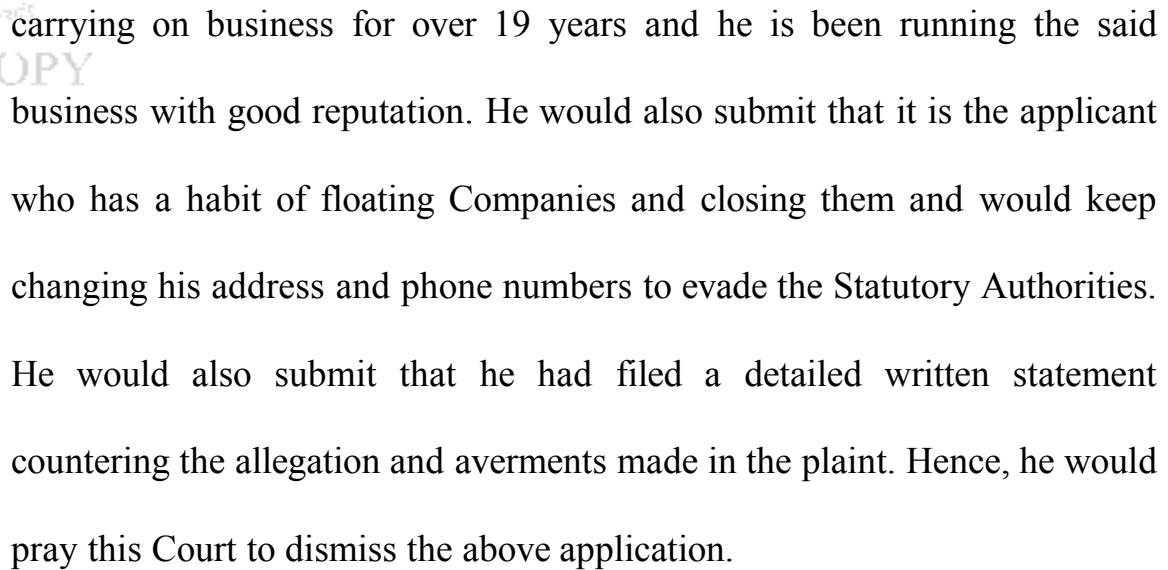
4.Mr.V.Manohar, learned counsel appearing on behalf of the applicant would submit that the applicant had being a financial resource to the respondent in carrying on his business of Orwell Travel Services from the year 2012. In spite of repeated demands, the respondent had failed to render true and proper accounts of the amount that was invested by the applicant. He would further submit that the understanding between the applicant and the defendant was that whatever amount that have been invested by the applicant would fetch interest and that the applicant was also entitled to a share of profit in the business. In spite of the notice issued to the respondent/ defendant, the same had not been properly replied by him.



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5. Further, the learned counsel would submit that the respondent had invested the money in various properties but had created encumbrances and alienation so that his creditors will be left in lurch. He also would submit that there was an apprehension that the defendant may vanish from the place of his residence which would defeat the right of the applicant to recover the amount and when the suit is decreed in his favour. He would submit that the respondent has various Bank accounts in his name and also in the name of the firms and it would only be proper to secure the interest of the applicant to pass an order of freezing the said accounts by way of an order of attachment before judgment.

6. Mr. R. Guru Dhananjay, learned counsel appearing for the respondent would vehemently oppose the claim made by the respondent. At the outset he would submit that the suit itself is not maintainable as the same is barred by limitation. He would further submit that there is no cause of action for the applicant to initiate the suit itself much less to seek the present interim order. He would submit that the respondent had been



7.I have considered the rival submissions made by the learned counsels appearing for their respective parties.

8. The case of the applicant is that he had been arranging periodical financial facility to the respondent for him to beneficially carry on the business under the name and style of Orwell Travel Services. The respondent had relied upon various statement of accounts of himself and predominantly his wife to claim that the applicant had been financing the respondent.



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9. The present application had been taken out invoking the provisions of Order XIV Rule 8 of the Original Side Rules read with Order XXXVIII Rule. When such an application is made, it is incumbent upon the applicant to move this Court to call upon the respondent to furnish security, if it is of the opinion that the respondents are about to dispose of whole or any the property or about to remove whole or any of the property from the local jurisdiction of this Court or when there is an undeniable presumption that the respondent may vanish in order to defeat the interest of the plaintiff in the suit. When he is called upon to furnish such security and if he fails to do so then under Rule 6 of the said Order, this Court can proceed to pass an order of attachment. In the present case what is sought to be attached are the Bank accounts of the respondents on the apprehension that the defendants may go out of the jurisdiction of this Court which would defeat the right of the applicant. Except making a bald averment in the application, the respondents would run away from the place of residence to defeat the right of the plaintiff, no other specific averment had been made by the



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applicant to substantiate his claim for an attachment before judgment. He had also made a further averment that the respondents had either encumbered nor alienated the properties belonging to him to cheat any persons. There has been no specific averment as to where the properties are, that has been held by the respondent and which property he had already encumbered or alienated. Hence, I am of the view that the applicant had not made out any case to satisfy the invocation of Order XXXVIII Rule 5 by this Court.

10. In fine, the above captioned Application is dismissed. However there shall be no order as to costs.

26.06.2023

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K.KUMARESH BABU,J.

Gba

A Pre-delivery order in

A.No.440 of 2023
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