

**THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

CIVIL REVISION PETITION Nos. 1862, 1863 & 1873 OF 2019

Date: 30.01.2023

CRP.No.1862 OF 2019:

Between:

M/s.Sri Laxmi Constructions,
A registered partnership firm, having its registered office
At H.No.8-38/1, 3rd Floor, Laxmi Nilayam, Raja Rajeswari
Nagar, Old Bowenpally, Secunderabad – 500011 & others.

.....Petitioners

And

M/s.Aryan Rock Product,
A registered partnership firm, vide registrar of firms No.840
Of 2013, having its registered office at H.No.15-9-59,
Maharajgunj, Hyderabad – 500 012 and others.

.....Respondents

The Court made the following:

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COMMON ORDER:

Heard Sri P.Chakravarthy, learned counsel for petitioners, and Sri N.Raghuveer, learned counsel for respondents.

2. The respondents herein instituted O.S.No.65 of 2018 in the Court of the XXIV Additional Chief Judge cum Commercial Court, City Civil Courts, at Hyderabad, praying to pass a decree against defendant Nos.1 to 3 for recovery of Rs.1,00,96,606/- being the consideration payable under the contract by defendant Nos.1 to 3 jointly and severally; to grant future interest at the rate of 18% per annum from the date of suit till realization. In the said suit, respondents herein filed I.A.No.722 of 2018 praying to direct the Chief Manager of respondent No.6 – Bank to freeze the current account No.07064015003798, Oriental Bank of Commerce, Green Lands Branch, Ameerpet, Hyderabad, of the respondent No.1 firm and keep the same in non-operative mode till realization of the contractual dues of Rs.1,00,96,606/- along with future interest from the date of filing of the suit till realization. By order dated 17.11.2018 the

Court below issued prohibitory orders directing respondent No.6 – Bank to keep the account mentioned above in non-operative mode till 03.12.2018 and issued urgent notice. The petitioners herein filed counter affidavit and prayed for vacation of the interim order granted by the Court below.

3. The trial Court considered the submissions made in the affidavit filed in support of the I.A., and counter affidavit, and on consideration of the submissions made by learned counsel, modified the earlier order, lifting the attachment of current account and directed the petitioners herein to furnish security equivalent to the suit claim as on the date of filing of the suit and also directed to file an undertaking that they would cooperate for expeditious disposal of the suit. The Court observed that on failure of complying with the above conditions, their defense in the suit would be struck off. Challenging the order dated 12.07.2019 in I.A.No.722 of 2018 in O.S.No.65 of 2018 the three defendants before the trial Court filed these three revisions.

4. It is the case of the respondents that even though the petitioners have sufficient means and carrying on successfully their business with reasonable revenues and thereby, having

sufficient means to discharge the liability, instead of discharging the liabilities, are diverting the excess funds from their bank accounts to unknown places. Therefore, the respondents apprehend that petitioners herein have no intention to discharge the liability and if the amounts are diverted, irreparable loss and hardship would be caused to them to mitigate the loss and damages and respondents have no option but to seek freezing of the bank accounts, details of which were furnished in a tabular form.

5. While seeking vacation of the attachment order, petitioners contended before the trial Court that their business is prospering and they have no difficulty in honouring the amounts claimed by respondents if a decree is passed in their favour. On the contrary, due to freezing of the bank account, their business is getting affected and could lead to more serious financial trouble as they are restrained from operating the bank account. Having regard to their financial position, there is no requirement to freeze their bank account. While praying to vacate the interim injunction freezing the bank account, they have categorically stated before the Court below that they are

willing to furnish any security as may be required to safeguard the interest of respondents.

6. Having considered the submissions made by the parties and having regard to the scope of Section 94 of the Civil Procedure Code, 1908 (for short 'CPC') and Order XXXVIII Rule 5 of the CPC, the Court below opined that since the petitioners voluntarily came forward to furnish the security, there was no requirement to freeze the bank account and the freezing of bank account could be lifted. Accordingly, the petition was dismissed and the freezing of bank account was lifted, but petitioners were directed to furnish the security as noted above.

7. Learned counsel for the petitioners vehemently contended that the ingredients of Order XXXVIII Rule 5 of the CPC are not attracted and no case is made out for freezing of bank account or furnishing the security. He further submits that all the findings recorded by the trial Court are in their favour and therefore, the trial Court erred in directing furnishing of security equivalent to the suit claim and that portion of the order is contrary to the findings recorded earlier by the trial Court. He further submits that the undertaking given by the petitioners in the counter affidavit filed in I.A.No.722 of 2018 was conditional,

subject to computation of accounts and not an unconditional offer, of furnishing security and this fact was not appreciated by the trial Court.

8. Per contra, according to learned counsel for respondents, the liability is admitted. The respondents have supplied the stock of building material, undertook mining, etc., as required and the invoices clearly disclose that materials to a tune of Rs.1,03,48,330/- were supplied but the said amount is not paid yet even though the petitioners have sufficient means and if the bank account is not freezed, the petitioners would not be coming forward to clear the dues and due to delay in clearing the dues, grave prejudice is caused to respondents.

9. The trial Court has noted that the respondents can be directed to furnish the security to produce any property belonging to him and to place the same at the disposal of the Court to order attachment of the property but freezing was not warranted. In that context, the lower court has also considered the precedent decisions. Having noted that the petitioners herein have fairly submitted before the trial Court their willingness to furnish security, the Court modified the earlier order and directed the petitioners to furnish security.

10. Having regard to the facts of this case and having regard to the fact that petitioners themselves have volunteered to furnish security, we do not see any error in the discretion exercised by the trial Court, warranting interference of this Court in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

11. However, one aspect noticed from the pleadings of respondents in the affidavit filed in support of I.A.No.722 of 2018, is though the total amount claimed by respondents was Rs.1,03,48,230/-, in paragraph No.8 the respondents have admitted that petitioners have already paid Rs.33,00,000/- and in paragraph No.9 they have stated that the principal outstanding amount due is only Rs.70,48,230/-. That being so, the Court below erred in directing furnishing of security, equivalent to the suit claim. In view of the clear admission on amount due by respondents, the petitioners need to furnish security only to the extent of Rs.70,48,230/-.

12. Accordingly, the order of trial Court dated 12.07.2019 made in IA.No.722 of 2018 in OS.No.65 of 2018 is modified to the extent of amount on which securities to be furnished by

petitioners. The petitioners are directed to furnish security to a tune of Rs.70,48,230/-.

13. Accordingly, the Civil Revision Petitions are disposed of.

Miscellaneous petitions, pending if any, shall stand closed.

P. NAVEEN RAO, J

NAGESH BHEEMAPAKA, J

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