

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.114**CR-3089-2023 (O&M)****Date of Decision: 18.05.2023**

Ravinder Pehal

...Petitioner

Versus

Vikas Jain and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Ajay Ghangas, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 13.02.2023 (Annexure P-5), whereby the application filed by respondent No.1/plaintiff under Order 38 Rule 5 CPC, was allowed and the property of petitioner/defendant No.1, described in list enclosed as Annexure A-1 before the Ld. Trial Court, was directed to be attached.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent No.1/plaintiff filed a suit for recovery of money against petitioner/defendant along with consequential relief of permanent injunction restraining defendant No.2/proforma respondent from alienating, mortgaging and transferring the suit property. During pendency of said civil suit, the respondent No.1/plaintiff moved an application under Order 38 Rule 5 CPC for attachment of property of petitioner/defendant No.1. Petitioner/defendant No.1 filed a reply thereto denying all averments made in the application while claiming that he had already paid an amount of Rs.10 Lakh to plaintiff on 17.10.2022 in cash in the presence of witnesses.

2.2. Vide impugned order, the application under Order 38 Rule 5 CPC, filed by respondent No.1/plaintiff, was allowed by Ld. Trial Court allowing attachment of property of defendant No.1/petitioner.

3. Learned counsel for petitioner/defendant No.1 would *inter alia* argue that burden of proof lies on plaintiff to prove his case. Plaintiff must establish *prima facie* that his claim is substantial and genuine, as well as to satisfy the Court that the defendant No.1 intends to alienate the property by disposing of all or part of his property or delay the execution of any decision that may be made against him. He would further contend that remedy under Order 38 Rule 5 CPC is an extraordinary, drastic and discretionary power of the Court and such power should not be exercised mechanically or merely on he asking of one party in a routine manner. Learned trial Court allowed the application of respondent No.1/plaintiff without considering the facts of the present case and provision of law applicable, is the contention.

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondent No.1/plaintiff is dispensed with, at this stage.

5. I have heard learned counsel for petitioner and perused case file.

6. Having seen the contents of application under Order 38 Rule 5 CPC (Annexure P-2) and the reasons stated therein for seeking surety to the tune of Rs.10 Lakh while attaching the property owned by petitioner/defendant No.1, I am of the view that the fear and apprehension of plaintiff/respondent No.1 can be easily allayed without preventing gainful use of and putting any cloud on the property of petitioner/defendant No.1 by ensuring that in case, he wishes to sell any of the properties (as mentioned in Annexure A-1 enclosed with the application and also mentioned in impugned order) during pendency of proceedings, he will take prior permission from Ld. Court below for the same.

7. Accordingly, the impugned order herein is modified to the extent that direction issued to revenue official to attach the said property is quashed. However, it

is made clear that in case petitioner/defendant No.1 wishes to sell any of the properties as mentioned in Annexure A-1 *ibid* in future, he will move an appropriate application before Ld. Trial Court for permission to do so.

8. Disposed of.
9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 18, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No