

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Civil Revision petition No.1095 of 2023

ORDER:

Heard learned counsel for the petitioners.

2. The learned counsel for the petitioners has essentially raised two grounds a) that an order of attachment under Order XXXVIII Rule 5 can only be passed, if the Court is satisfied that the respondent, with an intention to delay and to defeat the execution of the decree, is alienating his property, b) that along with the order of attachment and furnishing security a further order was given directing the garnishee to withhold a further sum of Rs.9,60,000/- which is the suit amount. Learned counsel contends that Order XXXVIII Rule 5 is an extraordinary remedy which should only be granted if the affidavit clearly discloses that the respondent with an intention to defeat and delay the decree is taking away the amount. He points out that the affidavit in this case does not contain the necessary details at all. Therefore on this ground he submits that the order itself is vitiated.

In ***Raman Tech. & Process Engg. Co. v. Solanki Traders***¹ the Hon'ble Supreme Court of India has approved the decision of the ***Calcutta High Court in Prem Raj Mundra V. Md. Maneck Gazi, AIR (1951) Cal 156***. The decision of the Hon'ble Supreme Court comes to the aid of the revision petitioner. In addition, this Court also notices that the prayer in the affidavit is only for security and conditional attachment. While granting conditional attachment, the trial Court also directed the 3rd respondent/Branch Manager to withhold the amount of Rs.9,60,000/-, which is not even sought for in I.A.No.386 of 2023 in O.S.No.178 of 2023. Therefore, for both the reasons, as the order is opposed to the settled law in the subject and since the order granted is far beyond the prayer, the Civil Revision Petition is allowed and the impugned order is set aside.

As a sequel, Miscellaneous Applications, if any, pending shall also stand dismissed.

JUSTICE D.V.S.S.SOMAYAJULU

Date: 31.08.2023.
KKV

¹ (2008) 2 SCC 302