

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.2687 of 2018

ORDER:

The defendant in O.S.No.117 of 2018 on the file of the Court of the Principle Senior Civil Judge, Kurnool is the petitioner in the present revision filed under Article 227 of the Constitution of India. This revision, challenges the order passed by the said Court in I.A.No.363 of 2018.

2. Heard the learned counsel for the petitioner and Sri Azhar Ali Khan for the respondent.

3. The respondent herein instituted the said suit against the petitioner for recovery of a sum of Rs.7,58,500/-. Along with the said suit, the respondent also filed present I.A.No.363 of 2018 under the provisions of Order 38 Rules 5 and 6 and Section 151 of the Code of Civil Procedure praying for attachment of the petition schedule property. The learned Senior Civil Judge, by way of the questioned order dated 12.04.2018, directed the defendant/petitioner herein not to alienate the property till the disposal of the suit.

4. According to the learned counsel for the petitioner the impugned order is highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 38 Rule 5 of the Code of Civil Procedure. It is further submitted by the learned counsel that without assigning any reasons, much less valid reasons, the learned Judge passed the impugned order by completely giving go-bye to the mandatory requirements of Rule 5 of Order 38 of the Code of Civil Procedure.

4. It is submitted by the learned counsel for the respondent that having regard to the facts and circumstances, the Court below is perfectly justified

in passing the impugned order and there is neither illegality nor there exists any infirmity in the impugned order and in the absence of the same the same is not amenable for judicial review under Article 227 of the Constitution of India.

5. In the light of the above submissions, now the issue that emerges for consideration of this Court under Article 227 of the Constitution of India is\_ “Whether the questioned order passed by the learned Senior Civil Judge is sustainable and tenable?

6. There is no controversy with regard to the fact that along with the suit the petitioner herein filed the present application under the provisions of Order 38 Rules 5 and 6 of the Code of Civil Procedure. As rightly pointed out by the learned counsel for the petitioner, the learned Judge did not assign any reasons much less valid reasons for passing the impugned order. In this context it is appropriate to refer to the Judgment of the Hon'ble Apex Court in *RAMAN TECH. & PROCESS ENGG.CO. AND ANOTHER v. SOLANKI TRADERS*<sup>1</sup>. In the said Judgment, the Hon'ble Apex Court at paragraph No.5 held as under:

“5. The power under Order 39 Rule 5 CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 is a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment.”

---

<sup>1</sup> (2008) 2 SCC 302

7. In the instant case, the learned Senior Civil Judge without adhering to the mandatory requirements of Order 38 Rule 5 of the Code of Civil Procedure and without assigning any reasons, passed the impugned order in a mechanical manner, as such, the said order cannot be sustained in the eye of law.

8. For the aforesaid reasons, the revision is allowed, setting the order dated 12.04.2018 passed in I.A.No.363 of 2018 in O.S.No.117 of 2018 on the file of the Court of the Principal Senior Civil Judge, Kurnool and the matter is remitted to the Court below, for consideration afresh, after giving notice and opportunity to all the stake holders. As a sequel, the miscellaneous petitions, if any, shall also stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:29.06.2018  
grk



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



CRP. No.2687 of 2018

Dated: 29.06.2018

grk