

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION No.2459 of 2022

Between:

1. Smt. Chavala (Chevala) Suguna Ratna Kumari,
W/o late Chavala Krishna @ Chevala Krishna,
aged 47 years, R/o D.No.11-28-2, Shivajinagar,
Gajuwaka, Visakhapatnam and two others.

... Petitioners/Defendants

And

Smt. Moturu Bharathi, W/o Moturu Naidu Veeranna, aged
48 years, R/o D.No.11-25-10, Azeemabad, Kanithi Road,
Gajuwaka, Visakhapatnam.

... Respondent/Plaintiff

Counsel for the petitioners : Sri S.Rajasekhar

Counsel for respondent : --

ORDER:

Defendants in the suit filed the above revision against the order dated 13.06.2022 in I.A.No.502 of 2020 in O.S.No.103 of 2020 on the file of the Junior Civil Judge, Gajuwaka.

2. Respondents, being the plaintiffs, filed suit O.S.No.103 of 2020 for recovery of amount on the strength of promissory note dated 24.06.2018 executed by the husband of the 1st defendant and father of defendants 2 and 3. The husband of the 1st

plaintiff died on 26.03.2019 and later the suit was filed for recovery of amount.

3. Pending the suit, plaintiffs filed I.A.No.502 of 2020 under Order XXXVIII Rule 5 read with Section 151 of CPC to direct the defendants 1 to 3 to furnish security for the suit amount and costs within the stipulated period fixed by the Court, failing which and in the meanwhile order conditional attachment of the suit schedule property before judgment to the extent of suit amount of Rs.10,29,000/-.

4. Respondents/defendants filed counter and opposed the application.

5. By order dated 13.06.2022, the trial Court allowed the petition directing the respondents/defendants 1 to 3 to furnish security for the suit amount of Rs.10,29,000/- and if they fail to furnish such security, attach the schedule mentioned property of the respondents to the extent of suit amount till disposal of the suit. Aggrieved by the said order, present revision is filed.

6. Heard learned counsel for the revision petitioners.

7. The order passed by the trial Court is under Order XXXVIII Rule 5 of CPC. Against the said order, an appeal under Order 43 Rule 1(q) of CPC would lie.

8. In **Union Bank of India, Visakhapatnam vs. M/s Andhra Technocrat Industries**¹, a Division Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad had an occasion to examine as to whether an Order dismissing the application under Order XXXVIII, Rule 5 of CPC seeking attachment before Judgment is appealable. It is a case, wherein the Union Bank of India filed a suit for recovery of money against the defendant M/s Andhra Technocrat Industries and moved an application under Order XXXVIII, Rule 5 of CPC for attachment of Rs.3,00,000/- lying with the Director General, Naval Project, Visakhapatnam. The said application was dismissed on contest. Aggrieved by which, the Union Bank of India preferred an appeal under Order 43, Rule 1(q) of CPC. The Division Bench after referring to the relevant provisions of Law at Paras 5 and 6 held as follows:-

5. The dominant object of R. 5 is to prevent the decree that may be passed against the defendant from being rendered unfruitful. The provisions of R. 5 can only be

¹ 1982 (2) APLJ 230

invoked when the Court is satisfied at any stage of the suit that the defendant has done or is about to do any act with intent to obstruct or delay execution of any decree that may ultimately be passed against him. The Court may issue, on the application, notice to the defendant to appear and furnish security or show cause why he should not furnish security for the satisfaction of the decree. The Court may also pass by the same order, immediately ordering attachment of the whole or any portion of the property specified by the defendant. Rule 6 contemplates orders of two kinds in an application under R. 5: (1) Where the defendant fails to show cause on an application under R. 5 why he should not furnish security, or fails to furnish the security required. Within the time fixed by the Court, the Court may make an unconditional order of attachment, (2) Where the defendant appears and shows cause or furnishes the required security in pursuance of the notice issued under R. 5 and the specified property or any portion of it has been attached under sub-rule (3) of Rule 5, the Court shall order the attachment to be withdrawn.

6. Now O. 43, R. 1 (q), C. P. C. makes both these orders under R. 6 appealable. The other orders are not appealable. An order dismissing an application under O.38, Rule 5 is not appealable. An order under Rule 5 merely directing the defendant to furnish security or to appear and show cause why security should not be furnished is not appealable. Only an order allowing an application under Rule 5 and an order withdrawing the attachment made under sub-rule (3) of Rule 5 any cause being shown by the defendant, are appealable.

9. Learned Single Judge of this Court in **Abburi Vara Prasad vs. Padala Satyanarayana Reddy and Others**² in C.R.P.No.1287 of 2021 held as follows:

“15. In the present case, it is not in dispute a conditional attachment Order was passed on 07.07.2021 directing the petitioner/defendant to furnish security for the suit amount or to show cause, why the attachment should not be made within 72 hours from the time on receipt of the Order and he failed to comply with the said direction. Thereafter the impugned Order dated 28.10.2021 was passed. In such circumstances, the matter squarely falls under Order XXXVIII, Rule 6 of 33 CPC and the Order of the Trial Court is appealable, in the light of the authoritative pronouncements of the Hon'ble Division Benches referred to supra.”

10. In view of the expressions in the judgments referred to supra, this Court is of the considered view that revision is not maintainable against the order impugned. Revision Petitioners have to file miscellaneous appeal under Order 43 Rule 1(q) of CPC before appropriate Court.

11. Accordingly, the Civil Revision Petition is dismissed at the stage of admission without going into merits of matter in view of maintainability. The Registry is directed to return the

² (2022) 4 ALT 211

original papers to the learned counsel for the petitioners enabling him to file an appeal before appropriate Court. No order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

SUBBA REDDY SATTI, J

Date : 30.11.2022
KA

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