

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Civil Revision Petition Nos.1088 and 1089 of 2023

COMMON ORDER:

Aggrieved by the condition to deposit a sum of Rs.2,60,48,099/- imposed in the common order, dated 26.07.2022, passed in I.A. No.51 of 2022 and I.A. No.459 of 2021, in I.A.No.1083 of 2019 in O.S.No.68 of 2019 on the file of the learned VI Additional District Judge, Kakinada, while allowing the petition filed seeking to raise the attachment that was ordered on 02.12.2019 under Order 38, Rule 5 CPC over the property of the petitioner, both these Civil Revision Petitions have been filed by the petitioner.

2) Heard learned counsel for the petitioner and learned counsel for the respondent.

3) The petitioner is the defendant in O.S No.68 of 2019 on the file of the learned VI Additional District Judge, Kakinada, filed by the respondent herein. The said Suit was filed for recovery of the amount said to have been received by the petitioner on the basis of an agreement to sell. The principal amount, according to the plaintiff, was Rs.1,50,00,000/-. So, with the accrued interest the Suit was filed for recovery of a sum of Rs.1,95,82,500/-.

4) Along with the Suit, the plaintiff has filed a petition seeking attachment of the property of the defendant in the Suit before judgment under Order 38, Rule 5 CPC. An *exparte* order of attachment before judgment was passed in respect of the said property.

5) The defendant has challenged the said order of attachment before judgment before this Court. The defendant before this Court in C.M.A. Nos.258 and 259 of 2022 has offered to deposit a sum of Rs.2,00,78,099/- as a security for the Suit claim in the trial Court. Therefore, as per order, dated 25.08.2022, passed by this Court in I.A. No.1 of 2022 in C.M.A. Nos.258 and 259 of 2022, which were subsequently converted into the present C.R.P. Nos.1088 and 1089 of 2023, held as follows:

“.....

On the said condition of depositing the said amount within two (2) weeks from the date of receipt of the copy of this order, there shall be interim suspension of the orders, dated 26-07-2022 passed in I.A.Nos.51 of 2022 and 459 of 2022 in I.A.No.1083 of 2019 in O.S. No.68 of 2019 on the file of the Court of the learned VI Additional District and Sessions Judge, Kakinada.”

6) Thus, this Court while accepting the offer made by the defendant to deposit a sum of Rs.2,00,78,099/- towards security for the Suit claim, permitted the petitioner to deposit the said

money within two weeks from the date of receipt of the copy of the said order and further ordered that on deposit of the said amount that there shall be interim suspension of the order, dated 26.07.2022, passed in I.A.Nos.51 of 2022 and 459 of 2022 in I.A.No.1083 of 2019 in O.S.No.68 of 2019 on the file of the Court of learned VI Additional District Judge, Kakinada.

7) Pursuant to the said direction, admittedly, the defendant has deposited the said sum of Rs.2,00,78,099/- before the trial Court. Therefore, now there is adequate security is available for the Suit claim of the plaintiff.

8) Thereafter, the defendant has filed a petition in I.A.No. 51 of 2022 before the trial Court to raise the attachment in view of deposit of the said amount towards security for the Suit claim. But, the trial Court by the impugned common order directed the petitioner to deposit a sum of Rs.2,60,48,099/- on or before 29.08.2022, instead of Rs.2,00,78,099/-. Aggrieved thereby both these Civil Revision Petitions are filed by the defendant.

9) When once the defendant has deposited sufficient sum of Rs.2,00,78,099/- towards security for realization of the Suit claim and that too in terms of the permission/direction that was given by this Court, the trial Court ought to have raised the attachment

as sufficient security is now available for realization of the Suit claim. In fact, the very object of ordering attachment before judgment is to have sufficient security for realization of the Suit claim in case the plaintiff succeeds in the Suit to enable him to realize the decretal amount. As sufficient security in the form of money itself is available to a tune of Rs.2,00,78,099/-, the interest of the plaintiff is very well protected and the trial Court ought to have raised the attachment as a sum of Rs.2,00,78,099/- was deposited towards security for realization of the Suit claim.

10) In fact, even in the judgment relied on by the learned counsel for the respondent herein, in the case of **Velu Yarn Traders, Chittoor District v. Lakshmi Priya Exports (India) Pvt. Ltd.**¹, it is held that if the respondents intend to attach the property, they can take steps for raising of attachment by offering security upto the value of the Suit claim or the item of the property. Therefore, in the instant case, as the defendant has offered to provide sufficient security for the Suit claim and in fact deposited substantial amount of Rs.2,00,78,099/-, which is beyond the Suit amount, as sufficient security for the Suit claim,

¹ 2013 (4) ALD 140 = 2013 (3) ALT 663

the petitioner is entitled to seek an order to raise the attachment of the property that was ordered.

11) Therefore, the impugned common order of the trial Court is clearly unsustainable under law and is liable to be set aside.

12) I.A.No.459 of 2021 is filed seeking permission of the trial Court to deposit a sum of Rs.2,00,78,099/-. Since, the High Court has now permitted to deposit the said amount, as per order, dated 25.08.2022, passed in I.A. No.1 of 2022 in C.M.A. Nos.258 and 259 of 2022, no permission is required from the trial Court to deposit the said amount. Further, as the defendant has already deposited the said money before the trial Court, no order is required to be passed in the said I.A.

13) Therefore, Civil Revision Petition No.1089 of 2023 is disposed of accordingly. No costs.

14) Civil Revision Petition No. 1088 of 2023 is allowed setting aside the impugned order of the trial Court. The petition filed by the petitioner in I.A. No. 51 of 2022 in I.A.No.1083 of 2019 in O.S.No.68 of 2019 on the file of the learned VI Additional District Judge, Kakinada, stands allowed and the order of attachment before judgment that was passed on 02.12.2019 is raised. No costs.

15) The request of the learned counsel for the respondent to direct the trial Court to expeditious disposal of the Suit is rejected. If he intends to have expeditious disposal of the Suit, he is at liberty to approach the trial Court and file a petition to advance the Suit by showing sufficient reasons for seeking expeditious disposal of the said Suit.

As a sequel, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:28-06-2023.
cs