

(1992) 04 AP CK 0003

In the Andhra Pradesh High Court

Case No : C.R.P. No"s. 3987, 3988 and 3990 to 3993 of 1991

Adduru Dasaratha Rami Reddy and another

APPELLANT

Vs

Vamireddy Vishnu

RESPONDENT

Date of Decision : 20-04-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 2, Order 38 Rule 2(1), Order 38 Rule 5, Order 38 Rule 6

Citation : AIR 1992 AP 307 : (1992) 2 ALT 535 : (1992) 2 APLJ 193

Hon'ble Judges : V. Neeladri Rao, J

Bench : Single Bench

Advocate : M/s. M.R.K. Choudary, M. Sadhana, Ch. Satishkumar, for the Appellant; M/s. M.P. Chandramouli and Katta Janardhan Rao, for the Respondent

Judgement

V. Neeladri Rao, J.—All these revision petitions were heard together, as the same point is involved.

2. The point which falls for consideration is as to what security has to be furnished under O. 38, R. 6 of C.P.C. The facts Which give rise to the above point are as under:

The revision petitioners herein are the defendants in OS Nos.270/91, 223/91, 219/91,221/91,225/91 and 227/91, Principal Sub Court, Tirupathi respectively. The plaintiffs-respondents in the respective suits filed petitions under O. 38, R. 5 of C.P.C. for attachment before judgment of the properties referred to in the petitions. The lower Court ordered the revision petitioners to furnish security for the suit amounts failing which the attachment should be effected. Then Smt. B. Pandmaja the sister of the second revision petitioner agreed to furnish security for the suit amounts in all these cases. It is submitted for the surety that she is having 1/4th undivided share in the building under the name and style of Jyothi Talkies and the total value of the said building, is Rupees 33,00,000/- even as per the market value certified by the Sub Registrar and thus her share is Rs. 8,00,000/- and odd. When these revision petitioners filed I.As. to accept the

security furnished by Smt. B. Padmaja, the lower Court dismissed those petitions by observing as under:

"The security furnished by the respondent in any view is not complying the said orders and the security that has furnished by the respondent is not acceptable as the surety is a third party security. As per the said orders the respondent has to furnish his self-security, not the security of the third party. Hence the petition is dismissed attaching the petition schedule property."

The above portion of the order is similar in all these cases. They are assailed in these revision petitions,

3. It is convenient to extract O. 38, R. 6 of C.P.C. to consider the point and it is as under:

"1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

2) Where the defendant shows, such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it think fit."

4. It is evident that O. 38, R. 6 of C.P.C. merely refers to security. It does not refer to the nature of security. It does not indicate that the said security should be immovable property security of the defendant or that he has to give bank guarantee. It does not indicate that it is not open to the defendant to furnish the third party personal security. In juxtaposition O. 38, R. 2(1) of C.P.C. can be referred to and it reads as under:

"1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule."

5. Where the defendant has absconded or about to abscond or left or about to leave the local limits of the jurisdiction of the Court or disposed of or removed his property or any part thereof from the local limits of the jurisdiction of the Court with a view to obstruct or delay the execution of any decree that may be passed against him or is about to leave India under the circumstances reasonably indicating that the plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit, the Court may issue the warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance. O. 38 , R. 2, C.P.C. lays down that if the defendant fails to show cause as referred to above, the

Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him or the Court may merely direct him to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him. But neither O. 38, R. 5 nor O. 38, R. 6, C.P.C. empowered the Court to direct the defendant to deposit in Court money or property other than the property sought to be attached. Even in regard to the properties sought to be attached, the Court is merely empowered to direct the defendant to furnish security to produce the property or the value of the same when required. The security referred to in O. 38, R. 2 or O. 38, R. 5 or O. 38, R. 6, C.P.C. is not qualified or modified. It does indicate that it may be the security of even a third party. Form No. 6 in Appendix-F, C.P.C. is the form in which the security has to be furnished under O. 38, R. 5, C.P.C. and it is as under:

"Where as at the instance ofthe plaintiff in the above suit the defendant has been directed to furnish security in the sum of Rs..... to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed :

THERETO, I..... have voluntarily become surety and do hereby bind myself, my heirs and executors to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing I bind myself, my heirs and executors to pay the said Court, at its order, the said sum of Rs..... or such sum not exceeding the said sum as the said Court may adjudge.

SCHEDULE

.....

Witness my hand at.....this.....day of 19

Witnesses : (Signed)"

1.

2.

If the personal security of third party is not contemplated under O. 38, R. 5, C.P.C. the said form could not have been prescribed. The security referred to in O. 38, R. 6, C.P.C. is the security as contemplated under O. 38, R. 5, C.P.C. Hence Form No. 6 in Appendix F to be used even for furnishing security under O. 38, R. 6, C.P.C.

6. The sister of the second revision petitioner offered to stand as a surety for the decretal amount, if any, going to be passed in the suits and she had executed the bond. When the personal security of the third party is sufficient security as envisaged under O. 38, R. 5, C.P.C., the trial Court erred in holding that the security to be furnished is that of the defendant only. When the defendant is

naturally liable to discharge the decree that may be passed against him, no purpose will be served if he is going to furnish personal security for the suit amount. There is nothing to indicate that the Legislature intended that the defendant should furnish other immovable or movable property as security to avert the attachment before judgment. If the immovable property has to be given as a security, the security bond has to be on stamped paper and it has to be registered. In such a case, substantial amount has to be spent towards stamp duty and registration charges. There is no need to incur such an expenditure, if he allows the attachment before judgment. Anyhow when the word used as "security" and thereby it cannot be stated that the third party's personal security cannot be furnished and as even Form No. 6 in Appendix-F does suggest that the third party personal security can be furnished, it has to be stated that the lower Court committed an illegality in rejecting the bonds furnished by the third party by holding that the third party's security cannot be accepted under O. 38, R. 6 , C.P.C.

7. But it is necessary to consider whether the surety is solvent enough to discharge the decree that may be passed if the defendant fails to produce the property which is sought to be attached or the value of the same. In this case, the surety stated that her 1/4th share in the building under the name and style of "Jyothi Talkies" comes to Rs. 8,00,000/- and odd even as per the market value certified by the Sub Registrar to that effect. If the plaintiffs in these cases doubt the solvency of the security herein, they can file objections in regard to the same and the lower Court has to consider those objections. If the solvency of this surety is accepted, her bonds as per Form No. 6 in Appendix-F have to be taken by the lower Court.

8. In the result, the impugned orders are set aside and the revision petitions are allowed. The trial Court has to proceed in accordance with law keeping in view the observations in this order. No costs in these revision petitions.

9. Revision allowed.