
(2001) 09 AP CK 0130
In the Andhra Pradesh High Court
Case No : CRP No. 3468 of 2001

B. Shivacharan Singh

APPELLANT

Vs

Shriram Chits Ltd., Warangal and Others

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

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

Citation : (2001) 6 ALD 73 : (2001) 6 ALT 159

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : D. Madhva Rao, for the Appellant; C. Nageswara Rao and Y.N. Lohitha, SC for APSFC, for the Respondent

Final Decision : Allowed

Judgement

Incomplete Text V. Eswaraiah, J.—This CRP is filed against the order dated 1-8-2001 made in IA No.793 of 2001 in OS No.249 of 2000 by the 2nd defendant in the suit and the 2nd respondent in IA No.793 of 2001 on the file of the Principal Senior Civil Judge, Warangal.

2. The 1st respondent herein is the plaintiff in the said suit. The plaintiff filed the suit against the 1st defendant, who is the subscriber of a chit and successful bidder and defendants 2 to 4 are guarantors for payment of the chit amount lifted by the 1st defendant. Subsequent to the filing of the suit, the plaintiff filed IA No.793 of 2001 under Order 38, Rule 5 CPC to pass prohibitory order directing respondents 5 and 6, who are the employers of the 2nd defendant, to withhold the amount of Rs.2,50,000/- from out of the service benefits payable to the 2nd defendant and deposit the same to the credit of the above suit. The said application filed by the petitioner-plaintiff is allowed by the order dated 1-8-2001, against which, the 2nd respondent-2nd defendant filed this CRP.

3. The learned Principal Senior Civil Judge, while allowing the said application, directed the petitioner herein not only to furnish 3rd party security to the

satisfaction of the Court on or before 16-8-2001 but also directed that till the petitioner herein furnishes the 3rd party security, the amount payable by respondents 5 and 6 to the 2nd respondent, i.e., the petitioner herein, towards ex-gratia, leave salary and 3 months' salary to an extent of Rs.2,50,000/- in the hands of respondents 5 and 6, is directed to be withheld by them by way of attachment.

4. In support of the application filed under Order 38, Rule 5 CPC, originally the affidavit was sworn by one Sri K.V.R.K . V, Prasad stating that he is the Divisional Manager of Sriram Chits Ltd.; and the 1st respondent is the subscriber of the chit for the value of Rs.3,00,000/- payable in 50 monthly instalments @ Rs.6,000/- per month; and the 1st respondent participated in the auction held on 28-9-1997 and withdrew the prize amount on furnishing respondents as guarantors. The 1st respondent-1st defendant committed default in payment of instalments; and accordingly, for recovery of an amount of Rs.1,98,440/-the suit has been filed; and the 2nd defendant is working as Deputy Manager, Finance, A.P. State Financial Corporation, Srikakulam branch and applied for retirement under Voluntary Retirement Scheme, which has been approved, and is trying to withdraw the entire voluntary retirement service benefits; and if the 2nd respondent-2nd defendant is allowed to withdraw the entire amount, the plaintiff will not be allowed to withdraw the decretal amount that may be passed in the suit, and accordingly, sought for a direction to respondents 5 and 6 to withhold an amount of Rs.2,50,000/- from out of the service benefits and other retirement benefits payable to the petitioner herein by respondents 5 and 6. The said application was filed on 18-7-2001.

5. Subsequently, on 23-7-2001, the Assistant General Manager and GPA Holder of the plaintiff-Chit Fund Company filed an affidavit stating that he was out of station on 18-7-2001, and therefore, on his instructions, Sri K.V.R.K. Prasad, who is working as Divisional Manager, filed the petition seeking prohibitory orders directing respondents 5 and 6 to withhold an amount of Rs.2,50,000/- from out of the service benefits and retirement benefits payable to the 2nd respondent, who is the petitioner herein.

6. The petitioner herein filed a counter on 23-7-2001 to the affidavit dated 18-7-2001 and also filed a detailed counter on 30-7-2001 to the 2nd affidavit dated 23-7-2001 and submitted that the application filed under Order 38, Rule 5 CPC is not maintainable and the requirements of law under Order 38, Rule 5 CPC have not been satisfied, and therefore, no order of attachment can be passed.

7. Under Order 38, Rule 5 CPC, where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him--

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court;

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show-cause why he should not furnish security. The Court may also in the order direct the conditional attachment of the whole or any portion of the property as specified. If the Court is satisfied that the defendant is not going to dispose of the whole or any part of the property or about to remove the whole or any part of the property from the local limits of the jurisdiction of the Court, then the question of ordering attachment does not arise and any such attachment shall be void.

8. In the instant case, the petitioner is only a guarantor and the 2nd defendant. The petitioner was working as a Deputy Manager, (Finance), A.P. State Financial Corporation, Nehru Nagar, Khammam. It is not the case of the plaintiff that the petitioner herein, who is the 2nd defendant, is about to dispose of whole or any part of the property. There is no averment or any allegation that the 2nd defendant is making an attempt to dispose of his property to defraud the decree that may be passed against him. Recovery of retiral benefits is incidental and ancillary event of an employee to get the retiral benefits in the natural course. The amounts sought to be withheld by the employer situated in Srikakulam District and also at Hyderabad cannot be said that the petitioner herein is about to remove the whole or any part of the property from the local limits of the Court, as respondents 5 and 6 are not within the local limits of the Court, and therefore, Order 38, Rule 5(1)(b) has no application to the facts of the case.

9. The only question that arises for consideration in this case is whether the applications filed is in conformity with Order 38, Rule 5(1)(a) CPC, that is to say, whether the petitioner herein is about to dispose of whole or any part of his property, has to be considered in this case.

10. There is no averment with regard to the aforesaid requirement by the plaintiff stating that the petitioner herein is about to dispose of whole or any part of his property with intent to obstruct or delay the execution of any decree that may be passed against him. A reading of the affidavit on the face of it, does not satisfy the requirement under Order 38, Rule 5 CPC, and therefore, no order of attachment can be ordered in the instant case. I am, therefore, of the opinion that the learned Principal Senior Civil Judge erred in ordering attachment. The order under revision is set aside and the CRP is allowed. No costs.