
(2003) 03 AP CK 0119
In the Andhra Pradesh High Court
Case No : CRP No. 3139 of 2002

Modem Mallikarjuna Rao

APPELLANT

Vs

Butti Bharathi and Others

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

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

Citation : (2003) 3 ALD 645

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : E. Manohar, for the Appellant; T. Veerabhadrayya, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—This Civil Revision Petition was filed against the order, dated 15-7-2002, passed by the I Additional District Judge, Nellore in I.A. No. 1013 of 2002 in O.S.No. 11 of 2002.

2. The Petitioner is the Plaintiff and Respondents are the Defendants in O.S.No. 11 of 2002 on the file of the I Additional District Judge, Nellore. The Petitioner filed the said O.S.No. 11 of 2002 for recovery of a sum of Rs. 70,18,837-00 ps. and costs of the suit together with subsequent interest at contract rate from out of the estate of late Butti Dasaradharami Reddy, the husband of the first Respondent-first Defendant and father of Respondents 2 and 3 (Defendants 2 and 3), or for such other reliefs as are just and necessary.

3. It is the case of the Petitioner-Plaintiff that the said late Dasaradharami Reddy borrowed from the Petitioner-Plaintiff a sum of Rs. 29,00,000/- in the morning of 1-4-2001 and executed a promissory note therefore in favour of the Petitioner-Plaintiff agreeing to repay the same with compound interest at the rate of 24 per cent per annum; that the said late Dasaradharami Reddy borrowed from the Petitioner-Plaintiff another sum of Rs. 10,00,000/- in the evening of 1-4-2001 and executed a promissory-note therefore in favour of the Petitioner-Plaintiff

agreeing to repay the same with compound interest at the rate of 24 per cent per annum; that on 2-5-2001 the said late Dasaradharami Reddy approached the Petitioner-Plaintiff again for a further sum of Rs. 16,00,000/- for obtaining bank guarantee towards the Earnest Money Deposit for his contract work and the Petitioner-Plaintiff agreed to lend the money and deposited the said sum of Rs. 16,00,000/- in the Tamil Nadu Mercantile Bank, Nellore for obtaining the bank guarantee by the said late Dasaradharami Reddy; that the said Dasaradharami Reddy then executed a promissory note therefore on 2-5-2001 in favour of the Petitioner-Plaintiff agreeing to repay the same with compound interest at the rate of 24 per cent per annum and that the total sum borrowed by the said late Dasaradharami Reddy from the Petitioner-Plaintiff is Rs. 55 lakhs. It is the further case of the Petitioner-Plaintiff that the said late Dasaradharami Reddy issued the Petitioner-Plaintiff a post dated cheque bearing No. 621629, dated 1-4-2002, for a sum of Rs. 67,88,000/- drawn on the Tamil Nadu Mercantile Bank Ltd., Nellore in favour of the Petitioner-Plaintiff assuring that the said late Dasaradharami Reddy is getting money out of the contracts, he executed, from the Government by the end of March, 2002; that meanwhile, as the said late Dasaradharami Reddy was seriously ill with blood cancer and was admitted in the Appollo Hospital, Hyderabad, the Petitioner-Plaintiff did not present the said cheque to the bank for realization; that the said late Dasaradharami Reddy died intestate on 19-4-2002 leaving behind him the Respondents-Defendants as his heirs; that the obsequies of the said late Dasaradharami Reddy took place in the village Kamireddypadu on 1-5-2002 and the Petitioner-Plaintiff also attended the obsequies and requested the second Respondent-second Defendant to pay the amount due under the promissory notes; that the second Respondent-second Defendant promised to pay the amounts within a short time but failed to keep up his promise and that having waited till 22-5-2002, the Petitioner-Plaintiff presented the said cheque in the Lakshmi Vilas Bank Limited, Nellore for collection and the said bank dishonoured the said cheque and returned it with the endorsement "Insufficient funds". It is also the case of the Petitioner-Plaintiff that the second Respondent-second Defendant with the co-operation of Respondents 1 and 3 (Defendants 1 and 3) is trying to draw the amounts due from the Government towards the execution of contract works by the said late Dasaradharami Reddy with intent to avoid the payment of the amount due to the Petitioner-Plaintiff and that, therefore, the Petitioner-Plaintiff filed the said I.A. No. 1013 of 2002 under Order 38 Rule 5 CPC.

4. In the said I.A. No. 1013 of 2002 it was stated by the Petitioner-Plaintiff that the Petitioner-Plaintiff came to know through P. Sudhakar and G. Janardhana Rao that the second Respondent-second Defendant with the co-operation of Respondents 1 and 3 (Defendants 1 and 3) is making hectic efforts to draw away the amount mentioned in the schedule with intent to defeat his claim for the suit amount and that if the Second Respondent-second Defendant is not restrained from doing so, the execution of decree that the Petitioner-Plaintiff may obtain in the suit will be defeated and the Petitioner-Plaintiff will not be in a position to

realize any portion of the decretal amount and thereby he will be put to irreparable loss. It was further stated by the Petitioner-Plaintiff therein that the second Respondent-second Defendant with the concurrence of Respondents 1 and 3 (Defendants 1 and 3) already withdrew an amount of Rs. 1,10,00,000/- relating to the works mentioned in the schedule annexed thereto and that the amount mentioned in the schedule is the amount due and payable by the officers mentioned therein to the said late Dasaradharami Reddy, In the circumstances, the Petitioner-Plaintiff prayed in the said I.A.No. 1013 of 2002 that the Respondents-Defendants may be directed to furnish proper and adequate security for the suit amount and costs of the suit within the time to be granted by the Court and that the amount mentioned in the schedule may be attached before judgment in case the Respondents-Defendants fail to furnish security within the time granted.

5. The Respondents, in their counter filed in the said I.A. No. 1013 of 2002, stated that the entire suit transaction is false and baseless; that the said late Dasaradharami Reddy was totally bedridden two months prior to the filing of the suit and was not in position to execute any document; that the said late Dasaradharami Reddy died on 19-4-2002 in Appollo Hospital, Hyderabad; that the said suit transaction was never brought to the notice of the Respondents-Defendants during the lifetime of the said Dasaradharami Reddy, that the said Dasaradharami Reddy never borrowed from the Petitioner-Plaintiff the said amounts of Rs. 29,00,000/-, Rs. 10,00,000/- and Rs. 16,00,000/- and executed promissory-notes in favour of the Petitioner-Plaintiff; that there was no occasion for the Respondents-Defendants to borrow such huge amount; that it was admitted that there were commercial business relations and transactions between the Petitioner-Plaintiff and the said late Dasaradharmi Reddy, that during the course of business, the said late Dasaratharami Reddy used to keep the signed blank cheque leaves with the Petitioner-Plaintiff in good faith; that the Petitioner-Plaintiff, who cast an evil eye on the properties of the Respondents-Defendants after the death of the said late Dasaradharami Reddy, used one such blank signed cheque by presenting it in the bank and filed the suit with mala fide intention; that the said promissory notes are false, fabricated and bogus and they are not supported by any consideration and not admissible in evidence and that, therefore, they cannot be looked into. It was also stated in the counter that the second Respondent-second Defendant is a respectable citizen and residing presently at Hyderabad along with his family and parents; that he owns vast properties at Hyderabad, Nellore, Kakinada and he is not at all absconding or leaving the jurisdiction of the Court and that the Petitioner-Plaintiff has mala fide intention in filing the suit against them. It was further stated in the counter that the Petitioner-Plaintiff had no capacity at any point of time to lend huge amount; that from the transaction as has been styled in the suit it is clear that the Petitioner-Plaintiff is a money lender and but he has no licence and that the suit filed by the Petitioner-Plaintiff is hit by the provisions of the Money Lenders Act. It was further stated in the counter that the notice served on the Respondents-

Defendants is not as per Form 5 enumerated in CPC and that the show-cause notice itself is bad in law inasmuch as the show-cause notice does not disclose what is the property to be attached. It was also further stated in the counter that the entire affidavit filed by the Petitioner-Plaintiff is silent and bald of necessary particulars with respect to the ingredients of Order 38 Rule 5 CPC and it does not also disclose any source of knowledge or definite instances which, otherwise, warrant the extraordinary relief of attachment before the judgment to be granted to the Petitioner-Plaintiff.

6. The Court below initially on the said I.A. No. 1013 of 2002 passed an order on 5-6-2002, which reads as follows:

"The suit is filed for recovery of Rs. 70,18,599/- basing upon three promissory notes, dated 1-4-2001 for Rs. 29,00,000/-; dated 1-4-2001 for Rs. 10,00,000/- and dated 2-5-2001 for Rs. 16,00,000/- executed by late Butti Dasaradharami Reddy in favour of the Plaintiff herein, against the respondents, who are the legal heirs of the deceased Butti Dasaradharami Reddy. The contention of the Petitioner is that the said Butti Dasaradharami Reddy has to get amount of Rs. 1,00,00,000/- from the Pay and Accounts Officer, S.R.B.C. Scheme Nandyala and the Executive Engineer, S.R.B.C. Division No. 2-1 Banaganapalli, Kurnool District in connection with Agrt. No. SE/III/NDL/DB/ D27No. I, NLB 97-98 dated 21-2-1998 (SRBC Block No. 9) and the respondents are making hectic efforts to withdraw the same and hence necessary orders are to be passed. He has also filed III party affidavits of Sri P. Sudhakar S/o Audiseshareddy, Nellore and Sri G. Janardhana Rao S/o Venkata Ramanaiah of Nellore to that effect. Hence satisfied. Hence issue conditional attachment to an extent of Rs. 70,18,599 + Suit costs and the Respondent is to be given forty eight hours from receiving this notice to file III party security or to appear before this Court to show-cause as to why the attachment is not to be made, failing which the attachment shall be made. Call on 19-6-2002. Issue urgent notice to the other side. Meanwhile the amount is to be withheld."

7. The Respondents-Defendants questioned the said order before this High Court in C.M.A. No. 1608 of 2002. A Division Bench of this High Court allowed the said C.M.A. No. 1608 of 2002 by order, dated 1-7-2002, which reads as follows:

"Aggrieved by the order passed by the Court below under order XXXVIII Rule 5 of the CPC whereby the Court below, having given 48 hours time either to give security or to produce the property attached before the Court, directed not to disburse the amount due to the appellants in the following words "meanwhile the amount is to be withheld" the present appeal is filed.

It is true that the Court below is not expected to pass such an order before expiry of the time prescribed for giving security. Now, it is brought to our notice that the appellants already tiled a counter in I.A. No. 1013 of 2002 in O.S. No. 11 of 2002 and the same is awaiting disposal on merits.

In the light of the above circumstances and keeping in view the undertaking

given by the appellants that they shall not withdraw the amount till the I.A. is disposed of on merits, the order of the Court below is set aside and the Court below is directed to dispose of I.A. No. 1013 of 2002 on merits after hearing both parties, within one week from the date of receipt of a copy of this order, if necessary, by advancing the date of hearing. Both the Counsel expressed their readiness to argue the matter and submit that they will not ask for any adjournment on the day when the matter is taken up for hearing.

The appeal is allowed accordingly."

8. As the Court below issued orders of conditional attachment of the suit sum giving the Respondents-Defendants 48 hours time to file third party security while issuing the show-cause notice, this Court set aside that order directing the Court below to hear both parties and pass appropriate orders. In view of the undertaking given by the Respondents-Defendants, this Court directed the Respondents-Defendants not to withdraw the amount till the said I.A. was disposed of. Pursuant to the aforesaid order of this Court in the said C.M.A., the Court below heard both parties and, by order, dated 15-7-2002, dismissed the said I.A.No. 1013 of 2002. Against that order, the Petitioner-Plaintiff filed this Civil Revision Petition.

9. Heard both sides and perused the record.

10. The Court below in the impugned order held that the Respondents-Defendants, in their counter, clearly mentioned that they have vast properties at Hyderabad, Kakinada and Nellore and as such there is no possibility for the Petitioner-Plaintiff to show that the Respondents-Defendants have intention to obstruct or delay the execution of the decree that may be passed against the Respondents-Defendants. The Court below further held therein that the simple allegation that the Respondents-Defendants already withdrew Rs. 1,10,00,000/-, is not sufficient for the Court below to direct the Respondents-Defendants to furnish security under Order 38 Rule 5 CPC for the suit amount and it does not amount that the Respondents-Defendants were intending to obstruct or delay the execution of the decree that may be passed by the Court below against them; that the second respondent-second defendant categorically mentioned that the Respondents-Defendants have vast properties at Hyderabad, Nellore and Kakinada, and stated that they will not abscond or leave the jurisdiction of the Court and that, therefore, passing order, under Order 38 Rule 5 CPC in favour of the Petitioner-Plaintiff would definitely affect and interfere with the fundamental rights of the Respondents-Defendants to have control over the properties to deal with in any manner.

11. Sri E. Manohar, Senior Counsel appearing for the Petitioner-Plaintiff, contends that the Court below having noticed that the Respondents-Defendants already withdrew an amount of Rs. 1,10,00,000/-, grossly erred in observing that the said act itself does not prove that the Respondents-Defendants have intention to obstruct or delay the execution of the decree. Sri Manohar also contends that the

Court below also grossly erred in arriving at the conclusion that the third party affidavits do not prove that the Respondents-Defendants made an attempt to defeat the realization of the decree notwithstanding the fact that in the said affidavits the third parties clearly mentioned that the second party (Respondents-Defendants) is trying to withdraw the amount from the Government department as early as possible with an intention of putting the same beyond the reach of his creditors including the Petitioner-Plaintiff. Sri Manohar, learned Senior Counsel for the Petitioner-Plaintiff, states that the Respondents-Defendants withdrew an amount of Rs. 1,10,00,000/-; that the third party affidavits clearly state the intention of the Respondents-Defendants to withdraw the schedule amount; that the Respondents-Defendants already withdrew substantial amount with a view to delay and defraud the creditors including the Petitioner-Plaintiff with regard to the decree that may be passed in the said suit and that the Respondents-Defendants have not furnished any details of the properties said to have been possessed by them at Hyderabad, Nellore and Kakinada.

12. On the other hand, Sri T. Veerabhadrayya, the learned Senior Counsel appearing for the Respondents-Defendants, defends the order passed by the Court below and submits that the suit claim of the Petitioner-Plaintiff is frivolous, fictitious and based on concocted documents; that the Petitioner-Plaintiff has no capacity to lend money; that the said late Dasaradharami Reddy was financially sound and there was no occasion to him to borrow money from others; that the Petitioner-Plaintiff filed the said suit taking advantage of the death of Dasaradharami Reddy; that at any point of time, no claim was made for the alleged debts incurred by the said late Dasaradharami Reddy during his lifetime; that the said late Dasaradharami Reddy never borrowed amounts from the Petitioner-Plaintiff and executed the said promissory notes in his favour; that there were business relations between the Petitioner-Plaintiff and late Dasaradharami Reddy, that taking advantage of the blank signed cheque, the Petitioner-Plaintiff cast an evil eye on their properties and presented the said cheque after manipulation; that the said suit was filed only for extracting the money from the Respondents-Defendants; that there is no material whatsoever filed by the Petitioner-Plaintiff for the attachment under Order 38 Rule 5 CPC; that the Court below, by its well reasoned order, dismissed the said I.A. No. 1013 of 2002; that there are absolutely no grounds for interference by this Court; that the Respondents-Defendants are not trying to draw the money to keep the same out of the reach of the creditors; that no grounds are mentioned for invoking the power under Order 38 Rule 5 CPC for seeking attachment before judgment; that the Respondents-Defendants are in possession of substantial properties and that there is no basis either for claim or for apprehension of the Petitioner-Plaintiff.

13. This Civil Revision Petition was filed on 19-7-2002. This Court on 19-7-2002 passed an interim order in CMP No. 13303 of 2002 attaching the schedule property. This Court on 19-7-2002 passed conditional interim order of attachment of the schedule property in CMP No. 13304 of 2002.

14. Order 38 CPC deals with arrest and attachment before judgment. Rules 1 to 4 of Order 38 CPC deal with arrest before judgment. Rules 5 to 13 of Order 38 CPC deal with attachment before judgment Under Sub-rule (1) of Rule 5 of Order 38 CPC at any stage of the suit if the Court is satisfied by the affidavit or otherwise that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of whole or any part of the property or is about to remove the whole or 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. Under Sub-rule (2) of Rule 5 of Order 38 the Plaintiff shall specify the property required to be attached and the estimated value thereof. Under Sub-rule (3) of Rule 5 of Order 38 CPC, the Court may in the order direct the conditional attachment of the whole or any portion of the property so specified. Under Sub-rule (4) of Rule 5 of Order 38 CPC if an order of attachment is made without complying with the provisions of Sub-rule (1) of Rule 5 of Order 38 CPC, such attachment shall be void. Under Rule 6 of Order 38 CPC, if 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. If 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 thinks fit.

15. The Petitioner-Plaintiff specifically alleged in the said I.A. No. 1013 of 2002 that the second Respondent-second Defendant with the co-operation of Respondents 1 and 3 (Defendants 1 and 3) is making hectic efforts to draw away the amount mentioned in the schedule with intent to defeat his claim for the suit amount; that if the second Respondent-second Defendant is not restrained from doing so, the execution of the decree that the Petitioner-Plaintiff may obtain in the suit, will be defeated and that the Petitioner-Plaintiff will not be in a position to realise any portion of the decretal amount and he will thereby be put to irreparable loss. It was further stated in the said I.A. No. 1013 of 2002 that the second Respondent with the concurrence of Respondents 1 and 3 (Defendants 1 and 3) already withdrew an amount of Rs. 1,10,00,000/- relating to the works mentioned in the schedule; that the amount mentioned in the schedule is payable by the officers mentioned therein; that the Respondents-Defendants may be directed to furnish proper and adequate security for the suit amount and costs of the suit within the time to be granted by the Court and that the amount mentioned in the schedule may be attached before judgment in case the Respondents-Defendants fail to furnish security. The said averment is in consonance with Rule 5(1) of Order 38 CPC. The Petitioner-Plaintiff also filed

third party affidavits stating that the second Respondent-second Defendant is trying to withdraw the amount mentioned in the schedule as early as possible with intent to defeat or delay the claim of the Petitioner-Plaintiff. As the Court below at the first instance without issuing any show-cause notice straightaway passed order of conditional attachment giving 48 hours alone to the second Respondent-second Defendant to furnish security, this Court set aside the said order directing the Court below to hear both parties and pass reasoned order. Though the Petitioner-Plaintiff specified the property required to be attached in the schedule filed along with the said I.A. No. 1013 of 2002, the Court below having noticed that the Respondents-Defendants already withdrew a substantial amount of Rs. 1,10,00,000/-, failed to appreciate the same in the proper perspective. What all the Petitioner-Plaintiff desires from the Court is only a direction to the Respondents-Defendants to furnish the property security for the suit amount. The Petitioner-Plaintiff is not interested in attaching the schedule amount but he requests the Court to direct the Respondents-Defendants to furnish the proper and adequate security for the suit amount alone. The Respondents-Defendants have not furnished any material particulars with regard to the so-called properties alleged to have been possessed by them at various places. There was no justification on the part of the Respondents-Defendants in refusing to furnish the security for the suit amount. The Court below assumed and presumed that the Respondents-Defendants have sufficient properties at Hyderabad, Nellore and Kakinada though no particulars have been furnished. Admittedly the Respondents-Defendants are not staying at Nellore but they themselves stated that they are staying at Hyderabad. If they are having vast property nothing prevented them from furnishing security for the suit amount.

16. In *Sardar Govindrao Mahadik and Another Vs. Devi Sahai and Others*, , the Supreme Court held at para 58 of its judgment as follows:

"Attachment before judgment is levied where the Court on an application of the plaintiff is satisfied 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 sole object behind the order levying attachment before judgment is to give an assurance to the plaintiff that his decree if made would be satisfied. It is a sort of a guarantee against decree becoming infructuous for want of property available from which the plaintiff can satisfy the decree."

17. A Division Bench of this High Court in *S.P. V. Babu v. Varalakshmi Finance Corporation* 1996 (4) ALD 453, held at para 6 of its judgment as follows:

"The scheme of the Code, as explained above, contemplates, before any order is passed under Order 38 Rule 6, the defendant to be called upon to furnish security to satisfy the decree that may be ultimately passed and only on his failure to furnish security, to direct attachment."

It was further held at para 6 of the judgment therein as follows:

"The essential conditions to be satisfied are that the Court must on proper materials be satisfied that there is an attempt of alienation of the properties so as to frustrate the decree that may be passed in the suit and secondly, on being called upon, the defendant fails to furnish security or to show-cause why the security would not be furnished. If the Court comes to prima facie view that an attempt is being made to dispose of the properties it may pass a conditional order of attachment while calling upon the defendant to furnish security. Hence the primary requirement is of the satisfaction of the Court that attachment is necessary to make the decree a reality and realizable and not one at vacuum."

18. In the instant case, the Petitioner-Plaintiff showed cogent reasons and submitted prima facie material to the Court so as to reach such a conclusion that there was an attempt by the Respondents-Defendants to withdraw the schedule property with a view to defeat the decree. I am of the opinion that the Petitioner-Plaintiff furnished sufficient material by making cogent and relevant averments in the affidavit as well as in the third party affidavits that the Respondents-Defendants with intent to obstruct or delay the execution of the decree that may be passed against them are about to dispose of the whole of the said property. If the schedule property is allowed to be withdrawn by the Respondents-Defendants without furnishing security for the suit amount, it may not be possible for the Petitioner-Plaintiff to execute the decree in the absence of any security. The Court below ought to have directed the Respondents-Defendants to furnish security when it is the case of the Respondents-Defendants that they have vast properties.

19. In *Chairman and M.D., R.P.N.N, Ltd v. Rambachane Singh*, 1997 (5) ALD 18, a Division Bench of this High Court held at para 3 of its judgment as follows:

"Such an order is not to be passed in a routine manner merely for the asking for it but that the Court has to be satisfied on tangible materials placed before it that there are attempts at alienation and that the steps are taken so as to delay or obstruct the judgment that may be ultimately passed against the defendant. Before passing an order, the defendant is first of all to be called upon to furnish security in the shape of specific sum to produce and place at the disposal of the Court, when required, the property specified by the plaintiff in his petition or such portion of it as may be sufficient to satisfy the decree or call upon him to show-cause as to why he shall not furnish security. But such an order can be passed only after the primary satisfaction of the obstructive conduct of the defendant. The ultimate attachment order can be passed only if the defendant either fails to show-cause why the security shall not be furnished or fails to furnish the security as required."

In the instant case, the Petitioner-Plaintiff pleaded that the Respondents-Defendants, by their impugned conduct, are intending to delay or obstruct the Petitioner-Plaintiff from the execution of the decree that may be passed.

20. In *Surender Singh Bajaj v. Kitty Stells Limited* 2002 (3) ALD 741, a Division Bench of this High Court at Para 10 of its judgment held:

"The above circumstance stated by the plaintiffs in the affidavit, even if true, in itself, in my considered opinion is not sufficient to pass an order under Order 38 Rule 5 CPC unless it is also pleaded that by the impugned conduct of the defendant No. 1, he was intending to delay the execution of the decree that may be passed by the Court against him. The satisfaction of the Court that the defendant with an intention to obstruct or delay the execution of the decree that may be passed by it, is about to dispose of the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, is sine qua non for exercising the power under Order 38 Rule 5."

The said condition is present in the instant case. The Court below ought to have appreciated the facts and averments made in the application filed by the Petitioner-Plaintiff under Order 38 Rule 5 CPC for attachment of the schedule property before judgment and ordered the application.

21. Sri Manohar, learned Senior Counsel for the Petitioner-Plaintiff, submits that the subsequent conduct of the Respondents-Defendants also shows that the Respondents-Defendants intended to withdraw the schedule property and that the Respondents-Defendants have not stated in the counter about the particulars of the properties said to have been possessed by them at various places. The Respondents-Defendants have not given any particulars and the details of alleged properties and their value. If the Respondents-Defendants really own immovable property which would satisfy the decree that may be passed in the suit, there may not be any objection from the Petitioner-Plaintiff for withdrawal of the schedule amount by the Respondents-Defendants.

22. Sri Manohar, learned Senior Counsel for the Petitioner-Plaintiff, states that if the Respondents-Defendants have huge properties there cannot be any justification on the part of the Respondents-Defendants in not furnishing the security for the suit amount. Sri Manohar, learned Senior Counsel for the Petitioner-Plaintiff, also states that having come to know about the interim order passed by this Court on 19-7-2002, the Respondents-Defendants filed a copy application on 22-7-2002 and obtained copies of the interim orders of this Court on the same day and subsequently filed an application bearing C.F.No. 2507 of 2002 before the Court below seeking communication of the dismissal order, dated 15-7-2002, passed by the Court below in I.A.No. 1013 of 2002 in the said suit to the garnishees to enable the Respondents-Defendants to withdraw the amount and to circumvent the orders of this Court and withdrew the amount lying with the garnishees which also clearly shows the mala fide intention of the Respondents-Defendants to keep the money out of the reach of the Petitioner-Plaintiff and defeat the very purpose of the decree.

23. A perusal of the record discloses that the Petitioner-Plaintiff made out a case

to the satisfaction of the Court that the Respondents-Defendants with intent to obstruct or delay the execution of any decree that may be passed against them, withdrew substantial amount i.e., Rs. 1,10,00,000/-, and also attempted to withdraw Rs. 1,00,00,000/- mentioned in the schedule. Therefore, I am of the considered opinion that the Court below ought to have directed the Respondents-Defendants to furnish sufficient security for the suit amount that may sufficiently satisfy the decree in the event of the suit being decreed in favour of the Petitioner-Plaintiff. In the interests of justice, it is just and proper that the Respondents-Defendants be directed to furnish proper and adequate security for the suit amount of Rs. 70,18,837-00 ps. Accordingly the order under this Civil Revision Petition is set aside. The Respondents-Defendants are directed to furnish proper and adequate security within a period of four weeks from the date of receipt of this order. On furnishing the adequate security to the satisfaction of the Court below, the Respondents are at liberty to withdraw schedule amount. Otherwise, there shall be attachment of the schedule amount to the extent of Rs. 70,18,837-00 ps. Till the Respondents-Defendants furnish the security, the interim orders passed by this Court shall subsist.

24. The Civil Revision Petition is accordingly allowed. There shall be no order as to costs.