
(1994) 04 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3032 of 1993

Om Parkash Bansal

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

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

Citation : (1994) 2 CivCC 375 : (1995) 109 PLR 725

Hon'ble Judges : A.P. Chowdhri, J

Bench : Single Bench

Advocate : Dharamvir Gupta, for the Appellant; H.S. Bhullar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Chowdhri, J.—This revision is directed against order dated May 5, 1993 passed by Additional Senior Subordinate Judge, Nabha, dismissing the petitioner's application under Order 38 Rule 5 of the Code of Civil Procedure.

2. Brief Facts of the case are that the Canara Bank instituted the suit for the recovery of Rs. 7,57,560/- against respondent 1 to 9 as the principal debtors and the petitioner, who was arrayed as defendant No. 10 in the suit, as guarantor. During the pendency of the suit, the guarantor defendant no. 10 made an application under Order 38 Rule 5 for attachment of the property of defendant No. 8, one of the principal debtors. The property referred to by the applicants was a share of defendant No. 8 in two theaters, one situated in Bathinda and the other at Malout. Alongwith the application, applicant filed his affidavit. The application was opposed and by the impugned order, the same was dismissed. Hence this revision petition.

3. Mr. Dharamvir Gupta, learned counsel for the petitioner, has contented that the application was dismissed by the trial Court on the sole ground that affidavit filed in support of the application was not properly verified. He submitted that if the court was of the view that the verification was not proper the court should

have given an opportunity to the applicant to correct the verification and should not have dismissed the application itself on that ground. He pointed out that in reply to the affidavit filed by the applicant, no counter affidavit was filed by defendant No. 8. Ordinarily the averments made in the affidavit of the applicant should have been accepted by the trial court being uncontroverted.

4. Mr. H.S. Bhullar, Learned Counsel for respondent No. 9 stated that he does not dispute the proposition that an application by a defendant against a co-defendant under Order 38 R. 5 of the Code of the Civil Procedure was maintainable, but his main contention is that attachment before judgment is, in the nature of things, an extraordinary remedy and it was the duty of the applicant seeking attachment before judgment to make out a convincing case for such an order. In the instant case he submitted that except repeating the words of the Order 38 Rule 5, the applicant has failed to give any definite facts or place on record any material to satisfy the court that respondent No. 9 was about to dispose of the whole or any part of his property or he was about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court within the meaning of Rule 5 Order 38. Mr. Bhullar highlighted the fact that the property referred to in the application was already situated at Bathinda and Malout i.e. outside the territorial jurisdiction of Nabha and there was thus no question sub-clause (b) of sub-rule (1) of Rule 5 of Order 38 being attracted to this case. He placed reliance on Bank of India Vs. National Tile Work Industries and Others, and UCO Bank, Madras Vs. Sukra Shoe Fabric and others, .

5. After hearing learned counsel for both the parties, I am of the view that this petition must fail.

6. It is factually incorrect to say that the learned trial Court dismissed the application on the sole ground of defective verification of the affidavit. The trial Court proceeded to observe that the well established proposition of law was that mere allegations in the application for attachment before judgment were not enough. Some definite instances or evidence must be produced in order to show that the respondent was about to dispose of his property or remove the same from the jurisdiction of the Court with an intent to defeat or delay the execution of decree. The trial court further observed that no such material had been placed on record by the applicant defendant No. 10. This point was elaborated by the trial Court by pointing out that if some property had already been disposed of by defendant No. 8, it was open to the applicant to place on record certified copies of the sale deed to substantiate his contention. In Bank of India's case (supra) it was held that jurisdiction under Order 38 Rule 6 had to be exercised sparingly and strictly in accordance with the procedure laid down. Mere allegations were not enough and that some definite instances or material must be produced by the plaintiff to make out a case for attachment before judgment. To the same effect are the observations in UCO Bank's case (supra). It was observed that attachment before judgment was an extraordinary remedy and that it was incumbent upon the applicant to state the grounds to prove the allegations by

giving material particulars and source of information, belief and so on. It was further observed that a mere verbatim repetition of the language of Order 38 Rule 5 without an iota or substratum of truth amounted to merely a colourable imitation and constituted an abuse of the process of Court.

7. I am in respectful agreement with the observations in the two decisions noted above. As rightly pointed out by the trial Court, such material is conspicuous by its absence in the instant case. That being so, there is no merit in this revision. It is accordingly dismissed, leaving the parties to bear their own costs.