

(1988) 06 KAR CK 0076
In the Karnataka High Court
Case No : C.R.P. No. 1069 of 1987

Selvan M. and Another

APPELLANT

Vs

Vivek Finance Corporation and Anr

RESPONDENT

Date of Decision : 24-06-1988

Acts Referred:

Citation : (1988) 06 KAR CK 0076

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : K. Prabhakar, for the Appellant; K.R. Balakrishna, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chandrakantaraj Urs, J.—This revision coming up for admission is disposed of by the following order.

2. The Petitioner is aggrieved by the refusal of the Court to withdraw the prohibitory order passed except on condition that the Petitioner furnishes security for the sum demanded in the suit.

3. It is unfortunate that Respondent's counsel is not present though represented, nor is Respondent present in Court. Therefore, this order is made ex parte.

4. The short question that falls for determination is whether the prohibitory order is properly made. In terms of Order 38 Rule 5 CPC an attachment before Judgment provided for under Rules 4 and 5 cannot be made unless the Court is satisfied on affidavit or otherwise that the Defendants are taking steps or preparing to frustrate the Plaintiff by resorting to removal of the properties or themselves outside the jurisdiction of the Court. When those are not specifically averred in the affidavit, there is no other way for the Court to make up its mind to issue prohibitory order after coming to the conclusion that those facts exist.

5. Sri K. Prabhakar, learned Counsel for the Petitioner has shown the true copy of

the affidavit filed by the Plaintiff in support of the prayer for prohibitory order restraining the Defendants from getting their bonus which was due. There is no allegation or assertion in the affidavit about the removal of property outside the jurisdiction of the Court or that they are likely to do any act which would frustrate the Plaintiff from realising the fruits of the decree that may be passed by the Court in the suit. If that averment is not there, then there is no way by which the Court may satisfy itself about facts which alone give jurisdiction to pass a prohibitory order or attachment before judgment. This has been expressly laid down by this Court in the case of Palghar Rolling Mills Pvt. Ltd. Vs. Visvesvaraya Iron and Steel Ltd. and Another, .

5. In this view of the matter, this Revision Petition succeeds. Accordingly it is allowed. The order under revision is set aside.

As a consequence of following the revision the prohibitory order passed by the trial court earlier on I.A.I, filed by the Petitioner is set aside as no case is made out by the Plaintiff for issue of such prohibitory order.