IN THE COURT OF MS. MEENU KAUSHIK: DISTRICT JUDGE – 03: NEW DELHI DISTRICT: PATIALA HOUSE COURTS : NEW DELHI

CS No. 329/2025

Nitin Gupta

Versus

Satnam Sandhu

28.08.2025

ORDER:

1 By way of this order I shall dispose of the application moved u/O 38 rule 5 & 6 CPC r/w section 151 CPC seeking interim relief.

2 Arguments on the application heard.

3 It is submitted by plaintiff that present suit is filed by him for recovery of Rs.1,41,18,207/- being the amount payable by the defendant to the plaintiff as on 25.05.2025 alongwith the interest @ 9% p.a. w.e.f. 26.05.2025. It is further submitted that plaintiff and his team of advocates had been representing defendant's mother in various matters till her untimely demise on 14.01.2023. It is further submitted that immediately post the demise of defendant's mother, the plaintiff was requested to represent the defendant and her sister in all the pending matters and the fees agreed for the same as was being charged earlier. It is further stated that defendant categorically agreed to pay fees to the plaintiff solely (i.e. on her behalf as well as on behalf of her sister) and believing defendant's false assurance, plaintiff started representing defendant and her sister as legal heir of their mother in various

courts/forums. It is further stated that defendant cleared the invoices for the period January to July, 2023 on 01.08.2023 leaving balance of Rs.42,936/-. It is further stated that in or around October, 2023, disputes arose between the defendant and her sister and one case was filed by her sister against the defendant before the Hon'ble High Court of Delhi over the Will dated 10.08.2021 of their mother. It is stated that defendant via e-mail dated 05.11.2024 requested the plaintiff to continue with the representation in all the matters. Plaintiff via e-mail dated 05.11.2025 clarified that the plaintiff would only continue with the representation in all the matters if the defendant agreed and assured to clear all past and future invoices with 9% interest to which defendant via e-mail dated 05.11.2024 agreed to the proposal made by the plaintiff. It is stated that vide e-mails dated 09.12.2024, 12.01.2025 and 16.03.2025 defendant assured and admitted to plaintiff regarding the payment by defendant.

4 It is further stated that as part of settlement between the defendant and the defendant Uncle (Sardar Ravi Inder Singh), the plaintiff immediately on 28th May 2025 filed an application for the release of the money lying before the Hon'ble High Court of Delhi and on 30.05.2025 the order for release for the money was passed. It is stated that from August 2023 to May 2025, the defendant was pleading and requesting the plaintiff not to give up the cases and continue with promises and assurances to make the payment but immediately post the settlement between the defendant and the defendant's Uncle (Mr. Ravi Inder Singh), the defendant has become completely dishonest after using the services given by the plaintiff. It is further stated that defendant has categorically and unconditionally admitted her liability via various e-mails. It is stated that instead of reverting on the payment schedule, the defendant

during a WhatsApp communication between 30.05.2025 and 01.06.2025 with the plaintiff, took a complete U-Turn to the unconditional admission of the defendant and stopped all communications with the plaintiff in order to avoid making payment of the admitted dues of the plaintiff. It is stated that it has come to the knowledge of the plaintiff from reliable sources that the defendant has already emptied her NRO Bank Account, HDFC Bank, Chhattarpur Branch, New Delhi. It is stated that plaintiff believes that the defendant has transferred all her money in India to USA and is in the process of escaping to USA. It is further stated that it has also come to the knowledge of the plaintiff that the defendant is in the process of alienating her 50% undivided share in Property situated in Ghitorni, New Delhi which she has inherited from her mother by virtue of Will.

5 It is stated that plaintiff will suffer grave irreparable loss and injury, if the relief sought in the present application is not granted to the plaintiff. By way of this application plaintiff has sought following reliefs:

a. Pass an *ex parte* order directing the defendant to furnish security/deposit an amount of Rs.1,41,18,260/- before the court.

b. Pass an *ex parte* order directing the defendant to seek permission of this court before leaving India and/ or directing the defendant to deposit her passport before this court.

c. Pass an *ex parte* order directing the defendant to state on affidavit the bank accounts held by defendant in India since August, 2023 and to file the bank statements of all the bank accounts held by the defendant in India from August, 2023 till date.

6 Per contra, defendant denied all the averments and contentions made by the plaintiff in the present application. It is stated that by way of present application, plaintiff has sought attachment of property of the defendant before the judgment. It is further submitted that present application is not maintainable as per law. It is argued that u/O 38 Rule 5 of CPC, it is clear that the mandatory pre-requisite for grant of any relief in the nature of an attachment before judgment is that plaintiff has to satisfy the court that the defendant is in process of disposing of/alienating its asset or is about to remove the whole or any part of the property from the local limits of the jurisdiction of the concerned court with an intention to defeat/ obstruct any potential judgment/ decree that may be passed in the relevant proceedings against the defendant. It is further argued that the burden is upon the plaintiff to establish and satisfy the court by way of cogent evidence that the defendant is essentially a fly by night operator and there is a possibility of a decree being rendered as a paper decree, on account of which, the plaintiff may not be able to realize any amount decreed by the court in the consequent execution proceedings. It is further submitted that the relief in the form of attachment before judgment the most drastic measure and therefore the same cannot be granted in a routine manner. It is further argued that status quo order with respect to the property No. 48, Club Drive, near Chelmsford County Club, M.G. Road, Ghitroni, Delhi has already been granted by Hon'ble Delhi High Court and the same was partly modified on the application of defendant and her sister only to enable them to execute the settlement entered into by them with their Uncle. It is further argued that in no way the defendant is in process of removing any asset from the jurisdiction of this court nor she is without any asset

which cannot be attached if the need ever arises in future/in an execution proceedings.

7 It is further argued that present suit is filed by plaintiff for recovery of his legal fees for rendering services not only on behalf of defendant but also on behalf of her sister who is not made party in the present suit. It is further stated that plaintiff has approached to the court with the above mentioned relief of attachment before judgment only on the basis that the respondent is a US citizen and will/ may not be able to satisfy any decree that may be passed in this case while fully being aware of the existence of immovable asset in the name of the defendant. It is further stated that plaintiff is aware of the fact that defendant upon settlement with her Uncle shall receive huge sum of monies.

8 Regarding the second prayer of the plaintiff for direction to the defendant for seeking permission before leaving India and/ or directing the defendant to deposit her passport before the court, it is stated that the prayer of the plaintiff is without any legal basis and in the money suit, prayer if any may be applicable pertaining to assets of the defendant and not for his/her physical presence in India. It is further stated that present prayer also impinges upon the fundamental rights of the defendant protected under Article 21 of the Constitution of India. It is further stated that defendant being the citizen of USA cannot be casually or arbitrarily restrained from travelling or going “home”. It is further stated that as per the judicial precedent of our country, the courts have exercised such drastic measures only in rare cases where the court is of the opinion that defendant is evading the presence before the court or in case of heinous crimes where the arrest of person is mandatory and / or presence is required for investigation purpose. It is further stated that the defendant is representing her mother / late Ms. Roopinder Kaur for several years in

multiple litigations in Delhi and Punjab and has sufficient assets in India to satisfy any possible decree and her physical presence is not required so long as she is adequately being represented before the court. It is further submitted that defendant is residing in India since 11.12.2024 and has applied for an Overseas Citizen of India (OCI) Card u/S 7A of Citizenship Act 1955 on 03.05.2025 which clearly reflects her intention to maintain ties with India. It is further submitted that the defendant has also applied for Visa extension for the period of one year i.e. till at least 09.06.2026 and the relevant documents are annexed in support of these contentions by the defendant. It is further stated that defendant has entered appearance in the present suit without being formally served and thus, the plaintiff herein has failed to establish a prima facie case and also not being able to produce an iota of evidence to substantiate the alleged apprehension/ assumptions made in the present application and thus, no case for grant of relief is being made out.

9 Regarding the third prayer i.e. to direct the defendant to state on affidavit regarding bank accounts hold by the defendant in India since August, 2023 and to file her bank statement from August, 2023 till date, it is stated that plaintiff has failed to establish any necessity or justification for seeking such relief and has in a casual manner sought information from the defendant. It is further stated that mere assertions by the plaintiff unsupported by cogent evidence/ grounds do not justify the infringement of defendant’s right to present suit.

10 Arguments addressed on behalf of the parties are taken into consideration. Record perused.

11 For the purpose of ready reference, **Order 38 Rule 5(1) is being reproduced hereunder:**

Where defendant may be called upon to furnish security for production of property

(1) 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.

12 In **Raman Tech v. Solanki Traders [(2008) 2 SCC 302]**, Hon'ble Supreme Court observed that:

> *"The power under Order 38 Rule 5 CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlements under threat of attachment."*

13 In **Ratan Kumar v. Howrah Motor Co. (P) Ltd., (AIR 1975 Cal 180); Premraj Mundra v. Mohd. Maneck Gazi (AIR 1951 Cal 156) &**

Raman Tech v. Solanki Traders [(2008) 2 SCC 302], it has been held as under:

> *"The remedy of attachment before judgment is an extraordinary remedy and must be exercised sparingly and strictly in accordance with law and with utmost care and caution so that it may not become an engine of oppression."*

14 In **Hari Sankar v. Bhoori Devi [(1975) 77 PLR 133]; Bharat Tobacco Co. v. Maula Saheb (AIR 1980 Guj 202; (1981) 22 Guj LR 343**, it has been held as under:

> *"Before an order of attachment can be made, the court must be satisfied about the following two conditions:*
>
> *(i) That the defendant is about to dispose of the whole or any part of his property: and*
>
> *(ii) That the disposal is with the intention of obstructing or delaying the execution of any decree that may be passed against him."*

15 In **Jai Prakash v. Basanta Kumari [(1911) 15 IC 604 (Cal)]**, it has been held as under:

> *"An attachment practically takes away the power of alienation and such a restriction on the exercise of the undoubted rights of ownership ought not be imposed upon an individual except upon clear and convincing proof that the order is needed for the protection of the plaintiff."*

16 The plaintiff herein has not disputed the fact that the defendant herein has entered her appearance without formal service of summons upon her. As per the defendant, she has already applied for extension of her visa for the period of one year i.e. till at least 09.06.2026. The relevant documents are annexed in support of these contentions by the defendant. It is also not disputed by the plaintiff that the status quo order with respect to the properties mentioned in the Will of the mother of the defendant is passed in the probate proceedings by the Hon'ble High Court of Delhi. It is the contention of the Ld. Counsel for the defendant that the defendant shall receive huge monies in terms of settlement with her uncle and that she is not able to dispose of her properties in view of the directions of Hon'ble High Court and thus, the apprehensions of the plaintiff are baseless that the defendant shall dispose of her properties in any manner to obstruct or delay the execution of any decree that may be passed against her. It is also argued that in case the present application is allowed, the defendant shall suffer great prejudice. The submissions of the Ld. Counsel for the defendant are found tenable. In view of the orders of the Hon'ble High Court for maintaining the status quo with respect to the properties, the court is of considered opinion that the preconditions for passing any order under Order XXXVIII of CPC are not satisfied. Resultantly, present application stands disposed of as not allowed.

(Meenu Kaushik)
District Judge-03
Patiala House Courts, New Delhi
28.08.2025