

SPCS/341/2015  
SPCS/139/2014

Order

Registration No:SPCS/341/2015  
Registration Date:15-08-2015  
Filing No: SPCS/341/2015  
Filing Date:15-08-2015

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & ADDL. CJM,  
AT**

**Appellants :**

1. M/S CREATIVE GARMENT PVT LTD THROUGH SHRI ASHVINKUMAR  
TRIPATHI  
RESI, CHALA, DAMAN ROAD,TA - VAPI DIST - VALSAD,,VAPI

**Vs.**

**Respondents :**

1. SHRI UMESHBHAI RAMANLAL PATEL  
RESI, PATEL FALIU,TO - POST - KALSAR, WAYA - UDWADA,TA - PARDI  
DIST- VALSAD,PARDI  
2. SHRI RAMANLAL KALYANJI PATEL  
RESI, PATEL FALIA,KALSAR, UDWADA, R.S.TA - PARDI DIST-  
VALSAD,PARDI

Appearance:

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A.S.KAPADIA, Advocate for the appellant.  
H.S.DESAI, Advocate for respondent.

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**ORDER**

**Order below Exh-5**

[1] Read the application and written arguments presented by the plaintiff at ***Exh-19***, and other papers on record. The plaintiff has given

present application under the provisions of **Order 38** of the **CPC** for attachment before judgment. Though given many opportunities to the defendants to file written statement and reply against the suit and the present application but the defendant has not filed the reply or the written statement.

[2] The present application based upon the confessional statement of the defendant no.1 recorded by the Police during police investigation in **C.R.NO. 110/2013** registered in Vapi Town Police Station **U/s. 408** of **IPC** at **mark - 3/8**, and a public notice published by the defendant no.2 ( Father of the defendant no.1) at **mark – 3/14**.

[3] Now the question is whether there is sufficient ground to attach the suit property before judgment? 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 guarantee against the decree becoming infructuous for want of property available from which the plaintiff can satisfy the decree.

[4] In the matter of attachment there are two guidelines namely :

- (i) *The intention of the defendant must be to obstruct or delay the execution of the decree. If there is no such intention powers under Order 38 of the CPC cannot be exercised and,*
- (ii) *With such intention the defendant is about to dispose of or remove from the jurisdiction of the court, whole or part of this peoperty.*

[5] For effective attachment before judgment court has to issue order directing security to be furnished for the sum specified or direct the defendant to showcause why he should not furnished security. In the case of **Harikishan Khosla V/s. Alembic Chemicals, reported in AIR 1986, ALL 87,** The Hon'ble High court has held that a vague statement in the application that the plaintiff had come to know from a definite source that the defendant was disposing of the property with intend to delay or obstruct the decree that may be passed is not sufficient. Full particulars about the sources of information

and why the plaintiff for that the defendant was about to dispose of his property with the requisite intent should be stated. The same view has been taken in the case of **UCO Bank V/s. Sukra Shoe Fabric, reported in AIR 1992, MAD 293.**

[6] Here in the present case not a single document produced by the plaintiff on record to show that the defendant no.1 is the owner of the property as stated in the present application or has any right or interest in the said property. As such no such particulars about the sources of information are given by the plaintiff and only vague statement is made against the defendant no.2 without any cogent and reliable evidences. In the case of **Tata Nagar Transport Corp. & Othrs. V/s. M/s. Ajanta Enterprise & Othrs., reported in AIR 1987, ORI. 107,** the Hon'ble High Court has held that order of attachment before adjudication of a claim or calling for security is not a common feature in a litigation. In exceptional circumstances only, such drastic action can be taken to safeguard the interest of the plaintiff.

[7] In the case of **Bharat Tobacco Co. V/s. Maula Saheb Jamadar & Othrs., reported in 1981(1), GLR, page no. 343,** the Hon'ble Gujarat High Court has held that an order of attachment before judgment is a drastic and ordinarily the court should be slow in exercising such powers. If the powers are not exercised with utmost care and caution, it may ruin the reputation and business of the defendant. Such powers should not be used to compel the other side to settle the matter with the plaintiff.

[8] In the case of **Seva Hawk Cargo Careers (P) Ltd. V/s. J. H. Purabia (P) Ltd., reported in 1995(1), GLR, page no. 606,** the Hon'ble High Court has held that attachment before judgment should not be lightly ordered.

[9] Thus, looking to the facts of the matter and in view of the above mentioned decisions, I am of the view that there is no justification to pass such order under the provisions of **Order 38** of the **CPC**. Hence I passed the following order in the interest of justice.

**::ORDER::**

- (1) The present application is hereby rejected.
- (2) No order as to costs.

Order pronounced today on 19th of October month of the year  
2015 in the open court.

Date:- 19-10-2015.  
Vapi.

( S. A. Shaikh )  
Principal Senior Civil Judge, Vapi.  
Code No. GJ 00558.