

**IN THE COURT OF THE PRINCIPAL DISTRICT AND  
SESSIONS JUDGE AT MYSURU**

**Dated this the 7<sup>th</sup> day of June, 2021**

**PRESENT**

**Sri. Ramachandra D. Huddar, B.Com., LL.M.,**  
Pr. District & Sessions Judge,  
Mysuru.

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**COM. O.S. No.131/2020**

**Plaintiff:**

M/s. PCP Electronic Pvt. Ltd.,  
No.191, Hebbal Industrial Area,  
Mysuru, by its Director Smt.Manju  
Prasad W/o P.C.Prasad.

**( By Sri. Goutham Chand, Advocate )**

**Vs.**

**Defendants:**

1. Yashas Electronics, No.68/A, (next to Marc Batteries) Hootagalli Industrial Area, Mysuru, by its Proprietrix Smt.Leelavathi B. W/o H.V.Somashekar, aged about 45 years,
2. Yashas Atreya S. S/o H.V.Somashekar, aged about 24 years, (residing with 1<sup>st</sup> defendant)
3. B.Vanajakshi W/o Late Narayan, aged about 49 years, Working at Shanthaveri Gopalagowda Memorial Hospital, T.Narasipura Main Road, Mysuru - 570 010.

**( By Sri.J.N.Parashivamurthy, Advocate )**

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**IN I.A.Nos.1 and 5**

**Applicant:** M/s. PCP Electronic Pvt. Ltd.,  
represented by its Director  
Manjuprasad. .... Plaintiff.

**Vs.**

**Opponent:** Yashas Electronics .... plaintiff.

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**ORDERS ON I.A.Nos 1 AND 5**

These interim applications are filed by the plaintiff i.e., I.A.I is filed under Order 38 Rule 5 r/w section 151 of C.P.C. to pass an order of attachment of the machinery specified in the schedule which have been kept in the industrial shed No.68/1, Hootagalli Industrial Area, Mysuru and I.A.V is filed under Order 39 Rules 6 and 7 r/w Section 151 of C.P.C. to pass an order of seizure of machineries belonging to the plaintiff as the defendants have not appeared or furnish any security as per the order passed in this case.

2. Along with these applications one Manju Prasad being the Director of the plaintiff company has filed an affidavit stating that, plaintiff was running an industry under the name and style as PCP Electronic Private Limited at No.191, Hebbal Industrial Area, Mysuru. It is stated that, because of some reasons, the plaintiff company stopped the production and closed the said company in the month of March 2017. Plaintiff company was supplying material to various companies and at the commencement of the business the machineries were imported

from Singapore and other countries, so also some of the machineries and other equipments were purchased in India.

3. It is further stated that, the 1<sup>st</sup> defendant was earlier working with the plaintiff company, therefore both plaintiff company and defendant No.1 were known to each other. It is stated that, defendants approached the plaintiff and represented that, they would buy the machinery belongs to the plaintiff company. They also agreed to make arrangements to secure loan from the bank i.e., Karnataka Bank, HDFC Bank. It is further stated that, the defendants agreed to make arrangements to secure the loan. Defendant Nos.2 and 3 respectively are none other than the son and sister of defendant No.1. They put forth a proposal to purchase the machineries of the plaintiff company and agreed to pay monthly EMI for the total amount fixed to purchase the machinery. It was Rs.one crore. There was an agreement to that effect. It is further stated that, defendant Nos.1 to 3 represented that, sum of Rs.one crore is payable in monthly E.M.I. of Rs.2,00,000/- for a period of five years i.e., 60 months. It is further stated that, the 1<sup>st</sup> defendant agreed that the 1<sup>st</sup> EMI will commence from July 2018 onwards. As per the agreement, defendants took all the machineries and other furnitures to their custody on 09.05.2018. The machineries specified in para No.2 of the affidavit have been taken over by the defendants. It is further stated that, these defendants kept all the machineries stated in para No.2 of the affidavit. When the plaintiff called upon the defendants to pay the monthly installments, but they have not done the payment. They went on postponing the said payment. Consistently plaintiff demanded

to pay the E.M.I. Plaintiff waited for a considerable period. Even then there was no proper payment. Therefore, the plaintiff requested to return the machineries. As the defendants did not, therefore the plaintiff got issued a notice on 20.03.2020 and called upon defendant Nos.1 and 2 to pay the amount or return the machineries. But the 1<sup>st</sup> defendant after taking over the machineries and furnitures have not paid the amount. Therefore, the plaintiff is constrained to file the present suit and has filed the application seeking attachment before judgment. If the application is not allowed, the plaintiff's family would be put to greater hardship and loss.

4. To this application the defendants filed detailed objection statement, denying entire assertions made in the affidavit. It is contended that, there is no proper procedure being followed by the plaintiff in filing this suit. This suit has to be sent for mediation as it is a Commercial Suit. It is further stated that, no such procedure has been followed by the plaintiff. It is further contended that, the machineries so purchased are more than 10 years old and they were not at all useful for the defendants. It is further contended that, there was a promise to give the old machineries in lieu of the amount being due to the 1<sup>st</sup> defendant by the plaintiff company. Therefore, instead of paying P.F. amount, the machineries have been given to the defendant No.1. Defendant No.1 is a vendor of certain articles to the L & T Company. It is further contended that, the 1<sup>st</sup> defendant had submitted an application to the Karnataka Bank for grant of Rs.25,00,000/- under the Prime Minister Employment Scheme. There was no proper advance of the amount by the said Bank, as

there was a refusal to pay the GST. It is contended that, one P.C.Prasad is the owner and Director of the PCP Electronics. It is further contended that, 1<sup>st</sup> defendant was working in PCP Electronic Company. It is admitted. But other allegations so made in the affidavit are not true. It is further stated that, the owner P.C.Prasad has given a quotation for Rs.25,00,000/- and has not given a quotation for Rs.one crore as alleged. It is further stated that, there was no agreement to pay the amount of Rs.one crore and payment of E.M.I. as alleged in the affidavit to the extent of Rs.2,00,000/- per month for a period of 5 years i.e., 60 months etc. According to the defendants, towards payment of total PF amount of Rs. 34,17,480/- these defendants have got the said machineries. The plaintiff has no locus-standi to file the present suit. By denying all the assertions made in the plaint, it is prayed by the defendants to dismiss the application.

5. So far as I.A.V is concerned, the contents of this affidavit are the replica of the contents of the affidavit filed along with I.A.I. It is stated that, as the defendants are not returning the said machineries or not paying the amount, therefore those machineries have to be seized. Defendants are trying to enter into the contract with third party to dispose of the machineries. Therefore, it is prayed by the plaintiff to allow both the applications.

6. So far as objections in I.A.V is concerned, similar objections have been filed with that of the objections so filed to I.A.I. It is contended that, there is no truth in the allegations made in the affidavits annexed to both the applications. It is

further contended that, there is no question of any confiscation of the machineries being possessed by the said defendants. Defendants are not expected to pay Rs.35,00,000/- in the manner claimed by the plaintiff company. It is denied that, total arrears of Rs.45,00,000/- is to be paid to the plaintiff etc. Hence, it is prayed to dismiss I.A.V.

7. Heard the arguments of both sides and meticulously perused the records.

8. The points that would arise for my consideration are as under:

**1. Whether the plaintiff has made out grounds to pass an order of attachment before judgment ?**

**2. Whether the plaintiff has made out grounds to put the plaintiff in possession of the schedule machineries as alleged ?**

**3. What order ?**

9. My answers to the above points are as under:

Point No.1 :: In the **affirmative**

Point No.2 :: In the **negative**

Point No.3 :: As per final order, for the following:

### **REASONS**

10. **Point No.1:**

On scrupulous reading of the contents of the plaint as well as the contents of I.A.No.1, it is stated that, this I.A. is filed by the

plaintiff to pass an order of attachment before judgment of the property so mentioned in the schedule appended to the plaint as well as application.

11. Throughout the affidavit annexed with I.A.No.1, it is stated that, plaintiff was running an Industry under the name and style as "*PCP Electronic Pvt. Ltd.*," at No.191, Hebbal Industrial Area, Mysuru. It is stated that, due to certain circumstances, plaintiff stopped production and closed the company in the month of March 2017. The plaintiff-company was supplying the material to various companies from the date of commencement of its business. When the company commenced its functioning, the machineries were imported from Singapore and other countries. So also, some of the machineries have been purchased in India itself.

12. It is alleged that, the 1<sup>st</sup> defendant is the Proprietrix of the firm which was being established in the year 2017 by her. Earlier, the 1<sup>st</sup> defendant was working in the plaintiff-company. Because of closing of the plaintiff's company, defendants approached the plaintiff to purchase the plant and machinery so fixed to the industry of the plaintiff. It was agreed by the plaintiff to sell the same. Thus, it is stated that, defendants bought the plant and machinery so mentioned in the schedule by borrowing a loan from the Karnataka Bank, HDFC Bank. The defendants agreed to pay the said amount in monthly instalments of Rs.2 lakhs for a period of 5 years i.e. 60 months. The said amount was inclusive of taxes and said transaction took place in the month of May

2018. Plaintiff mentions the machineries being purchased by the defendants as under:

1) SMT pick and place M x 200 with standard accessories and 83 feeders	2 Nos.
2) Heller convection reflow	2 Nos.
3) GKG fully automatic vision printer	1 No.
4) SMT pick & place MPS 10 20C	1 No.
5) Automated optical inspection system	1 No.
6) EMS wave, soldering machine	1 No.
7) PCB separate CAB	1 No.
8) Dry cabinet	1 No.
9) Kince Semi automatic screen printer	2 Nos.
10) Anest Iwata Compressor	1 No.
11) DB UPS	2 Nos.
12) Battery SM F26AH	36 Nos.
13) Juki KE 750	1 No.

13. It is alleged that, after purchase, defendants shifted all the machineries and furniture and fixture etc. to Industrial Shed No.68/A, Hootagalli Industrial Area. When plaintiff contacted defendants in the month of August 2018 and demanded to pay the EMI of Rs.2 lakhs for the month of July 2018, they went on postponing the same on one or other pretext. It is alleged that, the defendants are due to pay the amount as mentioned in the

plaint. It is further stated that, the defendants are liable to return the machineries which are in their custody as the defendants did not pay the EMI upto the filing of the suit. Thus, Rs.40 lakhs is due as on February 2020. As the defendants have failed to pay the amount, therefore the present suit is filed for recovery of money. It is stated that, if the application is not allowed, the plaintiff would be put to greater hardship and loss.

14. So far as objections filed by the defendants is concerned, it is stated that, the 1<sup>st</sup> defendant entered into transaction and purchased 10 years old machineries. As nobody came forward to purchase the said machineries from the plaintiff-company, it is defendants who purchased. The 1<sup>st</sup> defendant took possession of the same. So far as commencement of the company from the year 2008, it is admitted. It is stated that, the 1<sup>st</sup> defendant obtained a loan from Karnataka Bank under Prime Minister's Employment Guarantee Scheme. The 1<sup>st</sup> defendant filed an application to sanction loan of Rs.25 lakhs under the said Scheme. But, 1<sup>st</sup> defendant could not get any benefit. The Director P.C.Prasad being the applicant to this application gave a quotation of Rs.25 lakhs and has not given any quotation for Rs.1 crore. It is further stated that, the allegation of purchase of machineries worth Rs.1 crore is false. It is further stated that, there was no agreement to pay the EMI at the rate of Rs.2 lakhs as alleged by the plaintiff. It is further stated that, as the 1<sup>st</sup> defendant was working with the plaintiff-company, plaintiff-company has not paid the salary to defendant No.1. The arrears of salary including PF amount was Rs.34,17,480/-. In lieu of the

said payment of salary and PF amount to the extent of aforesaid amount, the 1<sup>st</sup> defendant has taken the plaintiffs of the said machineries. Therefore, the defendants are not responsible to pay any amount, much less claimed in the plaint. Thus, it is alleged that, whole allegation of the plaintiff that defendants are due to pay the suit claim so stated in the plaint etc. is denied. It is a false claim.

15. Now, we are deciding the application in the shape of I.A.No.1 with regard to the passing of an order of attachment before judgment. The Order-sheet of this case do reveal that, when the suit is being filed before this Court, exparte order is passed on I.A.No.1 and accordingly, an exparte order of attachment before judgment of the property mentioned in the schedule has been issued. The said order of attachment is extended from time to time till this day. That means, as on today also, the said exparte order passed on I.A.No.1 is in force i.e. order of attachment before judgment.

16. This order of attachment before judgment is governed by the provisions of Order 38 Rule 5 of C.P.C. So far as this provision of law is concerned, Order 38 speaks of 'Arrest and Attachment before Judgment'. While exercising jurisdiction under Order 38 Rule 5 of C.P.C., it is mandatory on the Court to form a prima facie opinion at that stage and need not go into the correctness or otherwise of the contentions raised by the parties. Thus, the object of Order 38 Rule 5 of C.P.C. is to safeguard the interest of the plaintiff and to restrain or prohibit the possible attempt of the

defendant to obstruct or delay the satisfaction of the decree which may be passed against him and in order to achieve this purpose, the Court may issue attachment before judgment of the property of the defendant. However, this being a harsh remedy, the Court should exercise its power very sparingly and with utmost caution, otherwise it would become the instrument of great oppression. Therefore, the Court before invoking its power under the said rule must be satisfied that the defendant is about to dispose of his property or about to remove it from its jurisdiction with the object to obstruct or delay the execution of the decree that may be passed. The satisfaction of the Court should be objective and not subjective, in as much as there must be positive and definite material before it that the defendant is about to dispose of the whole or part of his property and the disposal is with intention of obstructing or delaying the execution of the decree that may be passed against him. If some material is placed by the plaintiff that defendant has disposed of some of his properties, that by itself is not sufficient to exercise the extraordinary power without there being further material that such disposal is with the dishonest intention to frustrate the probable fruits of the decree that may be passed in favour of the plaintiff.

17. Keeping in mind the aforesaid principles, let me analyze the material being placed on record by the plaintiff that, whether plaintiff has made out grounds to make the order of attachment before judgment absolute as prayed.

18. Throughout the plaint, plaintiff has stated that, machineries so mentioned in the schedule have been sold by the plaintiff to the defendants and defendants assured to pay the sale proceeds amount with an EMI of Rs.2 lakhs each per month from July 2018. Plaintiff regularly was demanding the EMI amount. But, defendants went on postponing. It is alleged that, as on February 2020, defendants are liable to pay Rs.40 lakhs. It is stated that, as on the date of the suit, the defendants were due to pay Rs.35,05,000/-. But, these assertions have been denied by the defendants by filing detailed written statement. The contention of the defendants in the written statement as well as in the objections to I.A.No.1 is that, the 1<sup>st</sup> defendant was working with the plaintiff. Plaintiff was to pay the arrears of salary as well as PF amount to the extent of Rs.34,17,480/- and in lieu of the same, the plaintiff has given the said machineries to the defendants. Therefore, the question of payment of any EMI as alleged by the plaintiff do not arise at all.

19. Along with the plaint, the plaintiff has produced various documents i.e. various Invoices having purchased the machineries from M/s. Shenzhen Tongy Jia Industrial Develop Co. Ltd., China and M/s. Trans Technology Pvt. Ltd., Singapore. So, these documents are not disputed by the defendants. These documents show that, some of the machineries so mentioned in the invoices have been purchased by the plaintiff from China as well as Singapore.

20. The plaintiff has also produced the copy of the Legal Notice issued to the defendants calling upon them to pay the amount. It

is stated that, defendants approached the plaintiff to purchase machineries mentioned in the schedule and agreed to pay the sale proceeds in monthly instalments at the rate of Rs.2 lakhs each. Believing the representation, the plaintiff agreed and defendants took all the machineries and furniture and fixture to their custody on 09.05.2018. When there was a demand made to pay the amount, they went on postponing. Thus, it is alleged throughout the Legal Notice that, the plaintiff is entitled for the amount.

21. To this, reply notice has been given by the defendants denying the claim of the plaintiff.

22. On scrupulous reading of the contents of affidavit annexed with I.A.No.1, it is alleged that, the 1<sup>st</sup> defendant may misuse the machineries by selling to third person as the 1<sup>st</sup> defendant is not the owner of the machineries having not paid the consideration which was agreed. So far as ownership of the machineries of the plaintiff-company is concerned, the defendants never deny. The only defence as stated supra is that, in lieu of the arrears of salary and PF amount, the defendants took possession of the said machineries, furniture and fixture. Now, it is apprehension of the plaintiff that, defendant is going to alienate the said machineries to the third person without payment of any amount to the plaintiff being owner of the said machineries. That means, there is an apprehension in the mind of the plaintiff that, if the defendants sell the said machineries to the third parties and appropriate the amount to the defendants themselves, then the plaintiff will be deprived off the claim over the said machineries.

23. The provisions of Order 38 Rule 5 of C.P.C. is very much clear that, an order of attachment before judgment cannot be made on the mere asking of the plaintiff. Before making the order, the Court must be satisfied not only that the defendant is really about to dispose of his property or about to remove it from its jurisdiction, but also that the disposal or removal is with intent to obstruct or delay the execution of any decree that may be passed against him. Here, the plaintiff is the owner of the said machineries, which is not in dispute. Defendants are in possession of the said machineries is also not in dispute. Now the plaintiff says that, no EMI has been paid to the plaintiff by the defendants. Therefore, the satisfaction must be of the as regards these matters and it must be based on some material derived either from the affidavit of the party applying under Order 38 Rule 5 or otherwise. In this case, after satisfaction only, the exparte order of attachment has been passed by this Court and till date, the said exparte order is in force and it continued from time to timer. The remedy of attachment before judgment of an immovable property is extra ordinary, it amounts to cast an obligation on the opposite party even before it is heard in defence. Therefore, when order of attachment before judgment is sought by the plaintiff, it has to be pleaded and proved that, to deprive the execution of the decree and delay the same, there is likelihood of making such a defence etc. and denying rights of the plaintiff. Thus, on an application under Order 38 Rule 5, if the defendant is directed to furnish security to the extent of the suit claim so as to protect the interest of both the parties as stated under Order 38 Rule 5 of C.P.C., it would meet the ends of justice.

24. It is not the case of the defendants that, certain amount has been paid to the plaintiff with regard to the purchase of the said machineries. No such pleading is pleaded either in the written statement or in the objections to I.A.No.1. The only serious objection is that, in lieu of the arrears of salary and PF amount, the defendant No.1 is in possession of the said machineries. A full-fledged trial is necessary in this case so as to ascertain that whether plaintiff has really sold the scheduled machineries to the defendants or otherwise. So, in view of the claim of the plaintiff in this case, if an order of attachment before judgment is continued till disposal of the suit with a direction to furnish security to the extent of suit claim, it would meet the ends of justice. Therefore, in the considered view of this Court, in view of all these factual features, so also the material produced on record by both the sides, plaintiff has made out grounds to continue an order of attachment before judgment till disposal of the suit. The defendants to furnish security to the extent of the suit claim to the plaintiff by way of bank guarantee or security. With this view, I record my finding on **point No.1** in the **affirmative**.

25. **Point No.2:**

This I.A.No.5 is filed by the plaintiff under Order 39 Rule 6 and 7 of C.P.C., seeking the relief to put the plaintiff in possession of the machineries so mentioned in the schedule. The similar assertions have been made by the plaintiff in the affidavit that defendants are due to pay the suit claim and now there is likelihood of alienation, therefore the plaintiff be put in

possession of the said machineries. To this application, the defendants also have filed objections denying the entire allegations making a ground that as nobody came forward to purchase the machineries, therefore defendant No.1 took the possession of the said machineries in lieu of arrears of salary and PF amount. It is contended that, defendants never agreed to pay the said amount in EMIs as stated in the plaint or application.

26. On reading the provisions of Order 39 Rules 6 and 7 of C.P.C., Order 39 Rule 6 of C.P.C. speaks of power to order interim sale and Order 39 Rule 7 of C.P.C. speaks of detention, preservation, inspection etc. of subject matter of suit. In this case, as stated supra, the scope of Order 39 Rule 6 is that, for sale by way of interlocutory orders of any property which is the subject matter of the suit or attached before judgment, is permissible only when they are subject of speedy and natural decay and otherwise, when for any just and sufficient cause, the Court finds it desirable to sell them at once. Therefore, the power given to the Court under Order 39 Rule 6, alone is available before adjudication and decree that may be executed in accordance with the provisions of Order 21. The inherent power of the Court under Section 151 of C.P.C. is not available at all.

27. Evidently, in this case, the machineries are not subject of speedy and natural decay. Therefore, the provisions of Order 39 Rule 6 of C.P.C. has no application to the claim of the plaintiff now. Against the provisions of Order 39 Rule 6 of C.P.C., plaintiff claims that it be put in possession of the machineries.

28. So far as provisions of Order 39 Rule 7 of C.P.C. is concerned, it speaks of detention, preservation, inspection etc. of subject matter of the suit. Here, it is not the case of the plaintiff that, the defendants have already alienated or sold the said machineries. While answering point No.1, it is made clear that, plaintiff has made out grounds to continue the said attachment before judgment order till the disposal of the suit. It is also directed the defendants to furnish the security to the extent of the suit claim by way of a bank guarantee or security. If that is so, now the question of putting the plaintiff in possession of the machineries do not arise at all. Serious assertions have been made by the plaintiff against the defendants. To ascertain the probability of the case of the plaintiff, so also defence of the defendants, as stated supra, a full-fledged trial is necessary in this case. Therefore, the application so filed by the plaintiff in the shape of I.A.No.5 cannot be entertained now in view of interim order being passed on I.A.No.1. Therefore, **point No.2** is answered in the **negative**.

29. **Point No.3:**

Resultantly, I pass the following:

### **ORDER**

**I.A. No.1 filed by the plaintiff under Order 38 Rule 5 r/w Section 151 of C.P.C. is allowed.**

**The exparte order of attachment before judgment is continued till the disposal of the suit. However, the defendants are directed to furnish security to the extent of suit claim by way of bank security.**

**I.A.No.5 filed by the plaintiff under Order 39 Rule 6 and 7 r/w Section 151 of C.P.C. is dismissed.**

**Under the circumstances, I pass no orders as to cost.**

(Dictated partly to the Stenographer and partly to the Judgment Writer, transcribed by them on Computer, revised, corrected and then signed and pronounced by me in open court on this the **7<sup>th</sup> day of June, 2021**)

**(Ramachandra D. Huddar)**  
Prl. District & Sessions Judge,  
Mysuru.

\*jk/R

