



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3330]

MONDAY, THE 27th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION NO: 607/2026

Between:

1. UDDANTI MAHESH VARMA, S/O. U. KRISHNA MURTHY, AGED ABOUT 37 YEARS, HINDU, PVT. EMPLOYEE, WORKING AS SALESMAN/EXECUTIVE, ITC LIMITED, KADAPA, R/O. 5-27-12 UPSTAIRS, MUTHRASUPAFI, CHINNA CHOWK, KADAPA CITY AND DISTRICT.

...PETITIONER

AND

1. BUDHARAPU VIJAYA KRISHNA, S/o. B. Krishnaiah, Aged about 44 years, Hindu, Software Engineer r/o. D.No.41/81, Sankarapuram, Chinna Chowk, Kadapa City and District.

...RESPONDENT

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to aggrieved by the orders in IA NO.242/2024 on the file of the Court of the ADDITIONAL CIVIL JUDGE (SENIOR DIVISION), KADAPA, dated 11-04-2025

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order & Decree in IA No.242/2024 in OS No.54/2024 on the file of the Additional Civil Judge (senior division), Kadapa, Dated 11-04-2025 pending the Civil Revision Petition in this Hon'ble Court and pass

Counsel for the Petitioner:

1.DHARANI KUMAR B

Counsel for the Respondent:

1.RAMALAKSHMANA REDDY SANEPALLI

The Court made the following:

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION NO: 607/2026

ORDER:

Assailing the order dated 11.04.2025, passed in I.A.No.242 of 2024 in O.S.No.54 of 2024 on the file of learned Additional Civil Judge (Senior Division), Kadapa, the present Civil Revision Petition has been filed under Article 227 of the Constitution of India.

2. The respondent herein, who is the plaintiff, filed suit for recovery of money basing on bank transactions. The respondent herein filed I.A.No.242 of 2024 under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (for short C.P.C.) for attachment of properties of the petitioner herein. The said I.A. was allowed *vide* order dated 11.04.2025, directing the petitioner herein to furnish third party security for the suit claim of Rs.37,58,648/- within a period of 72 hours after issuance of notice, failing which the petition schedule property shall remains attached.

3. Learned counsel for the respondent (plaintiff) has taken an objection that against the order allowing the attachment before judgment is an appealable order, appeal is only maintainable and the revision is not maintainable under Article 227 of the Constitution of India. To strengthen the said contention the learned counsel for respondent relied on the judgment of the High Court of Judicature at Hyderabad, Andhra Pradesh in ***Union Bank of India, Visakhapatnam v. M/s.Andhra Technocrat Industries represented***

by its proprietor K.Satyanarayana Rao and another¹, wherein the Division Bench held that under Order XLIII Rule 1(q) of C.P.C. makes both orders under Rule 6 appealable. An order dismissing an application under Order XXXVIII Rule 5 is not appealable. An order under Rule 5 merely directing the defendant to furnish security or to appear and show cause why security should not be furnished is not appealable. Only an order allowing an application under Rule 5 and an order withdrawing the attachment made under sub-Rule (3) of Rule 5 on cause being shown by defendant, are appealable.

4. Learned counsel for the petitioner countered the said argument and stated that C.M.A. was preferred against the said order in I.A.No.242 of 2024 with Section 5 of the Limitation Act, 1963 application. Learned Principal District Judge returned the both the interlocutory application filed under section 5 of the Limitation Act stating that the main C.M.A. itself is not maintainable, observing that the an appeal is maintainable only against an order passed under Order XXXVIII Rule 6 under Order XLIII Rule 1 (q) of C.P.C., and not against an order under Order XXXVIII Rule 5 C.P.C. As seen from the order of the learned Civil Judge (Senior Division), the order was not passed under Rule 6 of Order XXXVIII of C.P.C.

5. Point for Consideration:

¹ AIR 1982 (AP) 408

The point that falls for consideration is that whether the following order passed by the learned Civil Judge (Senior Division) is an appealable under Order XLIII Rule 1 (q) of C.P.C., as it disregards the provision of Order XXXVIII Rule 6 C.P.C. The learned Civil Judge (Senior Division) *vide* order dated 11.04.2025 directed the petitioner herein, who is defendant in the suit, “to furnish 3rd party security of the suit claim within a period of 72 hours failing which petition schedule property shall remains attached.”

6. It is imperative and gainful to extract the relevant provision Order XXXVIII Rule 6 of C.P.C:

Attachment where cause not shown or security not furnished. –

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

7. An order under Rule 5 merely directing the defendant to furnish security or to appear and show cause why security should not be furnished is not appealable order. When the Court directs the defendant to furnish security with a stipulation that failing which, it results in the attachment of the suit property falls under Rule 6 of Order XXXVIII of C.P.C., consequently if the

defendant fails to furnish security or fulfil the direction, the resulting attachment order is an appealable order.

8. In this case the learned Civil Judge (Senior Division) issued the order directing the petitioner/defendant to furnish security, failing which the attachment order comes into force. Admittedly the petitioner/defendant has failed to provide security as directed by Court *vide* order dated 11.04.2025, and the attachment order has since come into force.

9. The Civil Miscellaneous Appeal is filed with delay that indicates that petitioner has not furnished the security. Then the Court should note that the order is passed under Order XXXVIII Rule 6 of C.P.C. merely not mentioning the order with specific provision in the order that does not mean the order was not delivered under the particular provision. That the Court should not fail to note, the consequences of failing to comply with the direction that it shall be regarded as an order under Rule 6 of Order XXXVIII of C.P.C. Rule 5 of Order XXXVIII will only enable the plaintiff to file an application to attach the property under the enumerated conditions. Consequently, the returning of the Civil Miscellaneous Appeal filed under Order XLIII, Rule 1(q) is unsustainable.

10. The Civil Miscellaneous Appeal has been filed with a delay, which suggests that the petitioner failed to furnish the required security. Therefore the order of the learned Civil Judge (Senior Division) came into effect. However, the Court should note that an order passed under Order XXXVIII Rule 6 of C.P.C. remains valid even if the specific provision is not explicitly

cited in the order itself. The absence of such a reference does not imply that the order was not issued under that provision.

11. Therefore, the petitioner is granted liberty to re-present the appeal under Order XLVII Rule 1 (1) of C.P.C. filed against the order in I.A.No.242 of 2024 in O.S.No.54 of 2024 on the file of learned Additional Civil Judge (Senior Division), Kadapa, within a period of two weeks from the date of receipt of a copy of this order. On presenting the appeal, the concerned Court is directed to receive the appeal and pass appropriate order on merits.

12. With the above observations, the present Civil Revision Petition is disposed of. There shall be no order as to costs.

As a sequel thereto, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 27.07.2026

KBN

38

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

CIVIL REVISION PETITION No.607 of 2026

Date: 27.07.2026

KBN