HIGH COURT FOR THE STATE OF TELANGANA

MAIN CASE No: CIVIL REVISION PETITION No.1490 of 2026

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
	15.05.2026	**GMM,J** **I.A.No.1 of 2026** This application is filed seeking to suspend the impugned attachment order dated 05.05.2026 passed in I.A.No.99 of 2026 in O.S.No.415 of 2025 on the file of the Principal Senior Civil Judge, Medchal-Malkajgiri District at Medchal till the disposal of the main Civil Revision Petition. Heard Mr. V. Rami Reddy, learned counsel for the petitioners; learned counsel for the respondent and perused the material on record. The respondent/plaintiff filed the suit *vide* O.S.No.415 of 2025 for recovery of Rs.13,20,246/- against the petitioners herein/defendant Nos.1 to 3. The said suit was posted for filing of written statement on 25.06.2026. On 04.05.2026, the respondent herein filed an application to advance the hearing date of the suit from 25.06.2026 to any convenient date. The respondent also filed another application under Order XXXVIII Rules 5, 7 and 8 read with Section 151 of CPC seeking attachment before judgment of petitioner No.1's Machinery, Machinery Tools, Office Furniture, Goods, Raw Material, Air Conditioners, Computers and other assets. The trial Court advanced the suit and on	Transferred to i.o. folder before corrections, if any.

		05.05.2026, without issuing notice to the petitioners herein or affording them an opportunity to file a counter or of hearing, had passed the impugned order in I.A. No.99 of 2026 directing the petitioners to furnish third party security for the suit amount of Rs.13,20,246/- within 48 hours of receipt of the order, failing which conditional attachment of the petition schedule property of petitioner No.1 would follow. The petitioners claim to have received a copy of the impugned order on 12.05.2026. Aggrieved by the impugned docket order, the petitioners preferred the CRP and the present application. Learned counsel for the petitioners submits that the impugned order is an *ex parte* order, which has been passed in gross violation of the principles of natural justice inasmuch as no notice or opportunity of hearing were granted to the petitioners herein, no counter was called for and the petitioners were not even served with the copies of the applications before the order was passed; that the trial Court had allowed the advancement of the suit and the application for attachment before judgment on 05.05.2026 without verifying whether service was affected and whether counter-affidavits were required to adjudicate the application for attachment before judgment; that the respondent/plaintiff failed to place any legally admissible material demonstrating that the petitioners intended to remove or dispose of or alienate the assets of the petitioner No.1 herein with dishonest intention of defeating the execution of any decree which was likely to be passed, which is a mandatory requirement for the grant of relief under Order XXXVIII Rule 5 of CPC; that the trial Court	

		has not recorded any specific finding of satisfaction regarding the intent of the petitioners to delay or defeat the decree which was likely to be passed in the suit; that the description of the property in the schedule of attachment namely: "Machinery, Machinery Tools, Office Furniture, Finished Goods, Raw Material, Air Conditioners, Computers" is vague, without any inventory, valuation or identifiable particulars, which render the order unenforceable; that the direction to furnish third party security within 48 hours has no statutory basis under Order XXXVIII Rule 5 of CPC and that the petitioners are running an established business with about 45 employees and the execution of attachment is likely to cause grave and irreparable loss and injury to the petitioners, which the trial Court failed to notice. I have taken note of the respective submissions urged and examined the material on record including the impugned order, plaint in O.S.No.415 of 2025, the affidavit filed in support of I.A.No.99 of 2026, the WhatsApp communication (under which the learned counsel for the respondent purportedly sent copies of the advancement application, the application under Order XXXVIII Rule 5 to the petitioner herein). The notice sent through WhatsApp is not recognized as a valid substituted service under CPC or the Telangana Civil Rules of Practice unless ordered by the Court. The trial Court did not pass any order either directing notice to the petitioner herein or permitting the service of notice through WhatsApp. Therefore, in the eyes of law, the petitioners were not served with the notice. The impugned order dated 05.05.2026 was	

passed without issuing any notice to the petitioners and without affording them an opportunity to file a counter-affidavit or make oral submissions. Therefore, the order is *ex parte*, which in the considered view of this Court is a fundamental breach of the principles of natural justice. The order of attachment before judgment affects valuable property rights and cannot be passed without hearing the affected party, except in case of extreme urgency where the Court is required to record reasons. In the present case, the trial Court has not recorded any reasons for dispensing with the notice.

An order of attachment before Judgment under Order XXXVIII Rule 5 of CPC is a drastic one. Order XXXVIII Rule 5 of CPC permits attachment before judgment only when the Court is satisfied that the defendants with an intention to obstruct or delay execution of any decree that may be passed, are likely to dispose or remove the property out of the jurisdiction of the Court. The satisfaction must be based on material placed before the Court and particularly the notice to the defendants is required unless the Court records reasons for granting *ex parte* conditional attachment. The trial Court failed to record any satisfaction as mandated by law. It is noteworthy that the respondent/plaintiff's affidavit only contains a bald statement at paragraph No.7, which is extracted hereunder:

> *"I submit that, on reliable information I came to know that, the defendants were trying to sold out their Rockcut Infra Private Limited by suppressing the their payment dues and liabilities in these circumstances I am not having any other alternative remedy I am preferring this present petition to attachment of The Rockcut Infra Private Limited Machinery, Machinery Tools, Office furniture,*

		Finished Goods, Raw material, A.cs, Computers, or else the defendants will escape their liabilities, it is just and necessary of attachment before Judgment." The Hon'ble Supreme Court and this Court have consistently held that the mere allegation of likelihood and alienation is insufficient and the Court must record *prima facie* satisfaction based on tangible material. The learned counsel for the petitioner has relied on a judgment of the Hon'ble Supreme Court in the case of ***Raman Tech. Process Engg. Co. and another v. Solanki Traders***[1] particularly paras 5 and 6 thereof which read as under: *5. The power under Order 38 Rule 5 CPC is 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 utilize 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 settlement, under threat of attachment.* *6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may*	

[1] (2008) 2 SCC 302

		be passed against him, before power is exercised under Order 38 Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment (See - Prem Raj Mundra v. Md. Maneck Gazi, AIR (1951) Cal 156, for a clear summary of the principles.) A perusal of the impugned order reveals no such satisfaction was recorded. The trial Court has not set out any *prima facie* finding on the existence of dishonest intention on the part of the petitioners herein. Mere filing of a suit for recovery of money and vague allegation of 'trying to sold out petitioner No.1 company' without any evidence or the disclosure of the source of such information cannot sustain an attachment before judgment. Further, the schedule property sought to be attached is vague and generic and lacks any specific identification and no make, no model, no inventionary number, no approximate value no distinguishing feature or even a statement whether the assets are owned or leased by petitioner No.1 are disclosed. The order of attachment must be capable of execution with certainty. An attachment order with a vague schedule is enforceable and liable to be set aside on that ground alone. The service of the copies of advancement application and the application under Order XXXVIII Rule 5 of CPC through WhatsApp on 04.05.2026 by the learned counsel for the respondent (plaintiff) is not proper. Even assuming that the service was deemed to have been affected on 04.05.2026 for the sake of argument, the petitioners herein did not have reasonable opportunity to file a counter or advance oral arguments or even the knowledge of	

		the date of hearing. The order of the trial Court is without granting sufficient time and opportunity to the petitioners herein and is therefore vitiated for violation of the principles of natural justice. It is pertinent to note that the suit was filed in November, 2025. There is no mention of any reason as to why the application for attachment before judgment was not filed along with the suit. It is not the case of the respondent/plaintiff that the alleged reliable information of the defendants "trying to sold" the assets of petitioner No.1 came to its knowledge only recently. Mere filing of an application for advancement does not automatically justify the grant of an order under order XXXVIII Rule 5 CPC on the same or the very next day. In view of the reasons recorded above, the impugned order passed by the trial Court in I.A.No.99 of 2026 in O.S.No.145 of 2025 dated 05.05.2026 is liable to be suspended as being unsustainable in law. Accordingly, this application is allowed. The order in I.A.No.99 of 2026 in O.S.No.415 of 2025 is suspended till the disposal of the CRP. **C.R.P.No.1490 of 2026** Issue notice to respondent. Learned counsel for the petitioner is permitted to take out personal notice to respondent and file proof of service into the Registry by the next date of hearing. List this matter on 22.06.2026. **GMM,J** Bj	