

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6171 OF 2001

M/S. RAMAN TECH & PROCESS ENGG.CO.&ANR.

Appellant (s)

VERSUS

M/S. SOLANKI TRADERS

Respondent(s)

Date: 20/11/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s)

Mr. D. Mahesh Babu,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER

The appeal is allowed and the order of the High Court is set aside and
the order of the Trial Court is restored in terms of the signed order.

(Ajay Kr. Jain)
Court Master

(Vijay Dhawan)
Court Master

(Signed reportable order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6171 OF 2001

Raman Tech. & Process Engg. Co. & Anr.

.....Appellants

Versus

Solanki Traders

.....Respondent

ORDER

The appellants are the defendants in O.S. No. 143/2000 on the file of the Civil Judge J
unior
Division, Medchal, filed by the respondent for recovery of Rs.99200/- towards supply of materi
al.

2. The plaintiff moved an application under Order 38 Rule 5 CPC praying for a direction to defendants to furnish security for the suit claim and if they failed to do so, for attachment before

judgment. The Trial Court by its order dated 4.8.2000 dismissed the said application. It noted that

though the plaintiff alleged that two post dated cheques given by the defendants towards payment of the

bill amounts were dishonoured, it had neither disclosed the particulars of the said cheques, nor the dates

of dishonour. It was of the view that merely making a bald statement that Rs.99,200/- was due from the

defendants was not sufficient to make out prima facie case, when defendants had denied the suit claim.

3. The said order was challenged in revision by the plaintiff. Before the High Court, the plaintiff pointed out that the trial court had ignored its averment that defendants had removed their name board

and were removing their machinery from the jurisdiction of the court. The plaintiff also produced a copy

of the writ petition (WP No.11855/2000) filed by the defendants to restrain the police from interfering

with the shifting of their assets from their business premises to another premises. The High Court

allowed the revision petition by order dated 13.10.2000, being of the view that the trial court ought to

have taken note of the fact that defendants were trying to remove the machinery. It directed defendants

to furnish security for the suit amount to the satisfaction of the court within four weeks. The said order

is challenged in this appeal by special leave.

4. The object of supplemental proceedings (applications for arrest or attachment before judgment,

grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being

defeated. The object of order 38 rule 5 CPC in particular, is to prevent any defendant from defeating the

realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to

dispose of, or remove from the jurisdiction of the court, his movables. The Scheme of Order 38 and the

use of the words 'to obstruct or delay the execution of any decree that may be passed against him' in

Rule 5 make it clear that before exercising the power under the said Rule, the court should be

satisfied

that there is a reasonable chance of a decree being passed in the suit against the defendant. This would

mean that the court should be satisfied that the plaintiff has a prima facie case. If the averments in the

plea and the documents produced in support of it, do not satisfy the court about the existence of a

prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff

should be protected by exercising power under Order 38 Rule 5 CPC. It is well-settled that merely

having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment

before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his

assets with the intention of defeating the decree that may be passed. Equally well settled is the position

that even where the defendant is removing or disposing his assets, an attachment before judgment will

not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.

5. 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 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 settlements, 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 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 vs. Md. Maneck Gazi -- AIR 1951 Cal 156, for

a clear summary of the principles.)

7. In this case, the suit claim was Rs.99200/-. The notice issued before filing the suit related to

dishonour of two cheques for Rs.22487/-. The particulars of the claim in the plaint were not specific.

The trial court had rejected the application on the ground that plaintiff had failed to make out a prima

facie case. It did not, therefore, examine the question whether defendant was attempting to defeat any

decree that may be passed by shifting his machinery. On the other hand, the High Court ignored the

absence of a prima facie case. It granted relief under order 38 rule 5, in exercise of revisional

jurisdiction, swayed by the fact that the defendants had shifted their assets to another premises.

8. On the facts and circumstances, the High Court ought not to have interfered with the order

rejecting the application. We, therefore, allow this appeal and set aside the order of the High Court and

restore the order of the trial court.

.....J

V. Raveendran)

.....

(R.

.....J

(P. Sathasivam)

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New Delhi;
November 20, 2007.