

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CIVIL MISCELLANEOUS APPEAL NO.331 OF 2016

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This Civil Miscellaneous Appeal under Order 43 Rule 1 CPC arises out of the order dated 22.02.2016 passed by the learned XII Additional District Judge-cum-Judge, Family Court, Guntur, in I.A.No.549 of 2014 in O.S.No.281 of 2014. By the said order, the trial Court allowed the petition filed by the respondent/plaintiff under Order 38 Rule 5 CPC and made absolute the interim attachment order passed earlier. Aggrieved thereby, the defendant is in appeal.

Heard Sri M.Vidya Sagar, learned counsel for the appellant/defendant, and Sri V.L.Surendra, learned counsel for the respondent/plaintiff.

O.S.No.281 of 2014 was filed by the respondent/plaintiff for recovery of a sum of Rs.46,04,500/- with subsequent interest. It appears that the Court below ordered interim attachment earlier and after hearing both parties, the order under appeal was passed making absolute the said attachment order.

Sri M.Vidya Sagar, learned counsel, would state that a sum of Rs.10,00,000/- was already paid to the respondent/plaintiff and that his client is willing to deposit a further sum of Rs.15,00,000/- to the credit of the suit to prove his bonafides, apart from immovable property security.

Sri V.L.Surendra, learned counsel, would however point out that the amount of Rs.10,00,000/- is duly admitted by his client and has also been shown in the valuation statement while calculating the total amount outstanding at Rs.46,04,500/-. He would further point out that in the event his client succeeds in the suit and interest is also payable on the principal amount, mere deposit of Rs.15,00,000/- to the credit of the suit would not suffice.

As issues in the suit are yet to be adjudicated upon, it would be wholly premature for this Court to go into the merits of the matter though the learned counsel advanced arguments in relation thereto. As matters stand, it would meet the ends of justice if security is furnished by the defendant in the suit so as to cover the suit claim. As Sri M.Vidya Sagar, learned counsel, states that his client is willing to deposit Rs.15,00,000/- to the credit of the suit and also states that his client would offer immovable property security to cover the rest of the suit claim, we are of the opinion that permitting him to do so would be adequate at this stage. Sri V.L.Surendra, learned counsel, is also agreeable to this course of action.

The order under appeal is accordingly set aside subject to the appellant/defendant depositing a sum of RS.15,00,000/- to the credit of O.S.No.281 of 2014 on the file of the learned XII Additional District Judge-cum-Judge, Family Court, Guntur, and furnishing immovable property security for the rest of the suit claim to the satisfaction of the said Court. This cash and immovable property security shall be furnished within four weeks from the date of receipt of a copy of this order. The order under appeal shall remain operative till such security is furnished in respect of the entire suit claim to the satisfaction of the trial Court.

The Civil Miscellaneous Appeal is accordingly allowed to the extent indicated above. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

ANIS, J

21st NOVEMBER, 2016

PGS