

**(1999) 05 P&H CK 0018**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R. No. 4754 of 1997

Rajinder Singh and Others

APPELLANT

Vs

Mahender Singh and Others

RESPONDENT

**Date of Decision:** May 14, 1999

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 38 Rule 5

**Citation:** (1999) 122 PLR 653 : (1999) 4 RCR(Civil) 309

**Hon'ble Judges:** Swatanter Kumar, J

**Bench:** Single Bench

**Advocate:** R.K. Gupta, for the Appellant; G.S. Jaswal, for the Respondent

**Final Decision:** Allowed

**Judgement**

Swatanter Kumar, J.

This revision is directed against the order of the learned Civil Judge, Junior Division, Hisar, dated 6.11.1997. Vide this impugned order, the learned Judge dismissed the application filed by the applicant-plaintiff under Order 38 Rule 5 C.P.C. but still directed the defendants in the suit to furnish security to the sum of Rs. 2 lac. Aggrieved from this judgment of the Court the defendants have filed the present revision petition.

2. The provisions of Order 38 Rule 5 of C.P.C. are stringent provisions and Can be taken recourse to once the basic ingredients specified under these provisions are satisfied and the Court is *prima facie* of the view that the decree of the Court is likely to be frustrated or unnecessary delay. The learned trial Court in the impugned order held as under:-

"Defendant has already submitted the accounts in the Court. The Local Commissioner was appointed to prepare the inventory of all the articles lying in the brick kiln. The brick kiln is owned by a cooperative society, there are other members of the society. The attachment of the brick kiln will adversely affect the interest of all

the members. Attachment of property before judgment is a remedy of extreme nature which is not to be granted unless the interest of the parties cannot be adequately safe-guarded by some other method, whatever amount is found due to the plaintiff at the final stage.

But further safeguard can be provided by directing the defendant to furnish security for due performance of the decree that may ultimately be passed. Hence the application for attachment of property of defendants is hereby dismissed. But the defendants are to furnish security in the sum of Rs. 2 lakhs to the satisfaction of this Court on or before 27.11.1997. In the event of default by the defendants attachment of entire property of brick kiln shall be ordered by the Court."

3. I have also perused the application under Order 38 Rule 5 of the CPC filed by the present appellant. It will be very difficult to say that it satisfies the basic ingredients for allowing an application for attachment before the judgment. However, in paragraphs 3 of the application, it has been stated that the injunction order passed by the Court has not been complied with and case u/s 406 IPC has been registered against the defendants. It has been specifically recorded by the learned trial Court in its order that the statement of accounts in furtherance to the order of the Court, has been filed. The registration of the case u/s 406 of the Indian Penal Code, per se, would not constitute a sufficient ground for passing of an order attaching property before judgment. Prima facie, it appears that the orders passed by the learned trial Court suffers from an error of jurisdiction apparent on the face of record. The application in substance, was dismissed. Thus, there could hardly be any justification for the Court to direct the defendant to furnish security. There appears to be an inbuilt construction in the order passed by the learned trial Court.

4. Resultantly, the impugned order dated 6.11.1997 is set aside. However, it is directed that the petitioners herein would file quarterly accounts before the learned trial Court and account shall be subject to the final orders to be passed by the Court in the suit. It is further expected that the suit will be finally disposed of by the learned Trial Court within a period of one year from today.

5. With the above observations, this petition is allowed.