IN THE HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD

***

CIVIL REVISION PETITION No.704 of 2026

Between:
M/s. Swiggy Limited.

Petitioner

VERSUS

M/s.Agromech Industries and others.

Respondents

ORDER PRONOUNCED ON: 12.03.2026

THE HON'BLE SRI JUSTICE P.SAM KOSHY

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	:	Yes
2.	Whether the copies of judgment may be marked to Law Reporters/Journals?	:	Yes
3.	Whether His Lordship wishes to see the fair copy of the Judgment?	:	**Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

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! Counsel for petitioner : Mr. L.Ravichandar, learned Senior Counsel appearing on behalf of Mr. S.V.Akarsh.

^Counsel for respondent No.1 : N.Vimal Kumar.

<GIST:

> HEAD NOTE:

? Cases referred
1) (2008) 2 SCC 302

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THE HONOURABLE SRI JUSTICE P.SAM KOSHY

CIVIL REVISION PETITION No.704 of 2026

DATE: 12.03.2026

Between:
M/s. Swiggy Limited.

…Petitioner

AND

M/s.Agromech Industries and others.

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ORDER:

Heard Mr. L.Ravichandar, learned Senior Counsel appearing on behalf of Mr. S.V.Akarsh, learned counsel on record for the petitioner; and Mr. N.Vimal Kumar, learned counsel on record for respondent No.1.

2. The instant Civil Revision Petition under Article 227 of the Constitution of India has been filed by the petitioner assailing the order dated 25.02.2026, in I.A.No.1296 of 2025 in O.S.No.01 of 2025, passed by the XIV Additional Chief Judge, City Civil Courts at Hyderabad.

3. The petitioner herein is the defendant No.1 and respondent No.1 herein is the plaintiff before the Trial Court. For convenience, the parties are being addressed in respect of their status before the Trial Court.

4. *Vide* the impugned order, the Trial Court partly allowed the I.A.No.1296 of 2025 filed by the plaintiff under Order XXXVIII Rule 5 read with Section 151 of the Civil Procedure Code, 1908 (for short 'CPC') seeking for attachment before judgment of the movable property belonging to the plaintiff.

5. The facts of the case in nutshell are that the plaintiff had filed a suit before the Trial Court for recovery of money to the tune of Rs.58,60,302/-. The suit is against the alleged supplies made by the plaintiff to the defendant Nos.1 to 11, who in turn, have not repaid the said amount to the tune of Rs.39,59,664.60/- in spite of the requests made. Since the repayment was not made, adding interest at the rate of 18% per annum for the period between 16.03.2022 to 16.11.2024 amounting to Rs.19,00,638/-, a money suit amounting to a total of Rs.58,60,302/- was filed.

6. It is said that the summons were duly served and the defendants failed to enter appearance and for which they were proceeded *ex parte* on 01.11.2025. Subsequently, one application under Order IX Rule 7 read of CPC was filed on behalf of the defendant No.1; however, the same was returned by the Trial Court as it was filed without any authorization. Meanwhile, the plaintiff had filed I.A.No.1296 of 2025 seeking attachment before judgment of the movable property belonging to the plaintiff i.e. the current bank account maintained with the HDFC Bank Ltd., Koramangala Branch, Bengaluru.

7. It is this application filed by the plaintiff which was partly allowed by the Trial Court leading to filing of the present Civil Revision Petition.

8. Before proceeding further with the present Civil Revision Petition, it would be relevant at this juncture to reproduce the findings given by the Trial Court in the course of passing the order of attachment before judgment. For ready reference, paragraph Nos.5 to 8 of the impugned order is reproduced hereunder, viz.,

> *"5. The power under Order XXXVIII Rule 5 CPC is extraordinary and must be exercised sparingly and cautiously, in order to set attachment*

of Suit Schedule property Bank account. The plaintiff must prima facie establish A bonafide claim and a reasonable apprehension that the defendant is attempting to defeat the decree. In the present case, the plaintiff has filed invoices, ledger accounts and statement of calculation showing the dues i.e., principal outstanding of Rs.39,59,664/- and interest calculated at 18% p.a. aggregating to Rs.58,60,302/-.

6. The Respondents, though notice served, have not chosen to file counter denying the transactions or disputing the liability. No material is placed before this Court to rebut the prima facie documentary evidence produced by the plaintiff. It is settled law that attachment before judgment cannot be granted merely on vague and general allegations. There must be some tangible material to show an intention to defeat the decree. The amounts involved in the suit are huge amount.

7. Considering the fact Respondents are set ex parte and have not placed any rebuttal material, and further considering the substantial amount involved, this Court is of the opinion that interest of justice would be met by directing the R.1 to furnish security instead of straightaway ordering attachment.

*8. **In the result**, the I.A. is partly allowed on the foregoing terms directing R1 to furnish security for a sum of Rs.58,60,302/- to the satisfaction of this Court within three days from the date of this order. In default of furnishing such security within the stipulated time, the Current Bank Account bearing No. 50200003950522 standing in the name of Respondent No.1 with HDFC Bank Ltd, Koramangala*

> *Branch, Bengaluru, shall stand attached before judgment to the extent of Rs.58,60,302/-. Issue notice to the concerned Bank in the event of default. Call on 03-03-2026."*

9. Referring to the impugned order, the learned Senior Counsel appearing for defendant No.1 contended that the impugned order is *per se* bad in law for more than one reasons. Firstly, the Trial Court has not been able to pin-point as to which of the ingredients as is required under Order XXXVIII Rule 5 of CPC is satisfied by the plaintiff enabling him to get the order of attachment before judgment. Secondly, the Trial Court itself in very categorical terms stated that the power conferred upon the Court under Order XXXVIII Rule 5 of CPC is an extraordinary one and has to be sparingly exercised and with great element of caution. Thirdly, pointing out to the impugned order, the learned Senior Counsel for defendant No.1 submitted that the Trial Court itself has specifically mentioned that there has to be a *prima facie* convincing material made out before the Court with which it could reach to the conclusion or frame an opinion that in the said circumstances if the order of attachment before judgment is not passed it would defeat the decree.

10. According to the learned Senior Counsel for defendant No.1 all the ingredients specifically envisaged under Order XXXVIII Rule 5 of CPC has not been taken into consideration by the Trial Court in the course of deciding I.A.No.1296 of 2025 and ascertaining the fact whether the plaintiff has been able to establish or produce tangible materials with which he could establish his case requiring an order of attachment before judgment.

11. So far as the merits of the case is concerned, referring to the pleadings of the plaint, the learned Senior Counsel contended that a plain reading of the plaint and the averments therein would establish that majority of the claims raised by the plaintiff in the suit is hit by the law of limitation as there are certain stale claims which have been clubbed in the instant suit, which otherwise would not be tenable. Nonetheless, the learned Senior Counsel primarily argued on the aspect that the Trial Court failed to meet the requirements envisaged under Order XXXVIII Rule 5 of CPC.

12. On the other hand, the learned counsel for the plaintiff questioned the very maintainability of the Civil Revision Petition itself. According to the learned counsel for the plaintiff, the defendant No.1 has moved an application under Order IX Rule 7 of CPC before the Trial Court and could have pursued the said application itself and thereafter could have contested the case before the Trial Court itself.

13. It was contended by the learned counsel for the plaintiff that a plain reading of the impugned order by itself is self-explanatory and would go to establish the fact that the defendant No.1 have deliberately avoided summons. Since there was a deliberate avoidance of summons there was an element of threat of the defendant No.1 foreseeing a decree of recovery against him and the possibility of withdrawing all the money from the bank account and ultimately if the suit is decreed in favour of the plaintiff, the plaintiff would find it difficult to execute the decree. Thus necessitating an attachment before judgment and which has been rightly appreciated and considered by the Trial Court. Hence, the impugned order passed by the Trial Court does not warrant any interference.

14. It was also the contention of the learned counsel for the plaintiff that the impugned order does not warrant any interference to the extent that the attachment is not to the entire bank account or any sort of transaction to be made from the bank. The attachment is to the limited extent of an amount of Rs.58,60,302/-. Since the defendant No.1's bank account has got much more money in its credit, defendant No.1 would be free to operate the said account on the balance of amount.

15. It was lastly contended by the learned counsel for the plaintiff that from the present financial statements available, defendant No.1 is a loss making establishment and with the mounting loss, there is all possibility of defendant No.1 withdrawing the amount from the bank account which later on could be detrimental to the claim of the plaintiff upon a final decree being passed. For this reason also the impugned order does not warrant any interference.

16. Having heard the contentions put forth on either side and on perusal of records, particularly taking into consideration the pleadings and the materials brought on record and also the findings given by the

Trial Court, it would be necessary at this juncture to refer to the provisions of Order XXXVIII Rule 5 of CPC. For ready reference, the relevant portion of the Order XXXVIII Rule 5 of CPC is reproduced hereunder, viz.,

> ***5. Where defendant may be called upon to furnish security for production of property.—****(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—*
>
> *(a) is about to dispose of the whole or any part of his property, or*
>
> *(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,*
>
> *the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security."*

17. Now if we read the pleadings of the plaint except for the contention of the default on the part of defendant Nos.1 to 11 there does not seem to be any averment which could meet the ingredients envisaged under Order XXXVIII Rule 5(1) of CPC. Further, when we read the pleadings of the affidavit filed under Order XXXVIII Rule 5 of CPC

petition, again except for the reference to the invoices, ledger statements of calculations showing the alleged dues payable by the defendants to the plaintiff, the plaintiff has not tried to bring out any of the ingredients as is required under the provisions of Order XXXVIII Rule 5 of CPC. Though the application under Order XXXVIII Rule 5 of CPC does not make a reference of the grounds under which the said application can be allowed, but the whole reading of the affidavit would not give a single tangible material for the said contention of the plaintiff showing that any act on the part of defendant No.1 trying to obstruct or delay execution of any decree could be passed against him. Neither is there any material to show that the defendants have disposed of their property either in part or in whole, nor is there any averment so far as the defendants trying to remove either in part or whole any part of the property from the local limits of the jurisdiction of the Court. Lastly, there is also no material to show that the defendant No.1 has, in fact, even tried to withdraw substantial portion of the money from the bank account and transferred it malafidely to the account of the family members of the defendant No.1.

18. In the teeth of the aforesaid factual matrix of the case, when there is no material to show the essential ingredients with which the Trial Court could have been satisfied of the plaintiff having met with the ingredients envisaged under Order XXXVIII Rule 5(1) of CPC, the order of attachment made becomes void. Even the impugned order does not indicate the tangible materials which were produced and on the basis of which the Court could reach to a conclusion or be satisfied of the plaintiff having met with the conditions stipulated under Order XXXVIII Rule 5(1) of CPC.

19. The impugned order, particularly when we read paragraph Nos.6 and 7, would indicate that the reason why the Trial Court has partly allowed the Order XXXVIII Rule 5 application was that of no material being placed before the Trial Court to rebut the *prima facie* documentary evidence produced by the plaintiff. However, the documents produced by the plaintiff are only so far as the invoices and vouchers on the basis of which the plaintiff is claiming the recovery of dues from defendant No.1. Apart from this, there is no material produced by the plaintiff which compelled him to file Order XXXVIII Rule 5 application. In the absence

of any such ingredients being brought, relied and referred to, it is difficult to hold that there was satisfactory material available for the Trial Court to have allowed the Order XXXVIII Rule 5 application filed by the plaintiff.

20. The Hon'ble Supreme Court in the case of **Raman Tech. and Process Engg. Co. and Ors. vs. Solanki Traders**[1], held at paragraph Nos.4 to 6, as under:

> *"**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 realisation 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 plaint 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*

[1] (2008) 2 SCC 302

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 utilise 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 bona fide 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 Premraj Mundra v. Md. Manech Gazi [AIR 1951 Cal 156] for a clear summary of the principles.)"*

21. For all the aforesaid reasons and the judicial precedent referred to above in the preceding paragraph, this Court is of the opinion that the impugned order passed by the Trial Court lacks reasons dealing with the ingredients envisaged under Order XXXVIII Rule 5(1) of CPC and is therefore not sustainable. The impugned order passed by the Trial Court is accordingly set aside / quashed. However, this Court grants leave to the plaintiff to revive its application in the event is it is able to produce before the Trial Court cogent and tangible materials establishing the ingredients envisaged under Order XXXVIII Rule 5 of CPC seeking attachment of the property before judgment.

22. The instant Civil Revision Petition accordingly stands allowed.

23. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

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P.SAM KOSHY, J

Date: 12.03.2026

Note: L.R. Copy to be marked.

(B/o)GSD