

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.1202 of 2013
and
M.P.No.1 of 2013**

P.Murugesan .. Petitioner/Defendant

Vs.

G.Raja .. Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.448 of 2012 in O.S.No.338 of 2011 dated 23.01.2012 on the file of the Learned II Additional Subordinate Judge, Erode.

For Petitioner : Mr.P.Jagadeesan

For Respondent : Mr.S.Kaithamalai Kumaran
for M/s.A.K.Kumarasamy

ORDER

The Petitioner/Defendant has focused the instant Civil Revision Petition before this Court as against the order dated 23.01.2012 in I.A.No.448 of 2012 in O.S.No.338 of 2011 passed by

the Learned II Additional Subordinate Judge, Erode.

2.The Learned II Additional Subordinate Judge, Erode, while passing the impugned order dated 23.01.2012 in I.A.No.448 of 2012 in O.S.No.338 of 2011 (filed by the Respondent/Plaintiff as Petitioner under Or.38 R.5 and Section 151 of the Civil Procedure Code) had observed the following:

"Respondent is directed to furnish the security for suit claim on or before 13.02.2013, failing which further orders will be passed. Call on 13.02.2013."

3.Challenging the said impugned order dated 23.01.2012 in I.A.No.448 of 2012 in O.S.No.338 of 2011 on the file of the trial Court, the Learned counsel for the Petitioner/Defendant submits that the trial Court had failed to consider any of the valid objections raised by the Revision Petitioner/Defendant in the counter filed in I.A.No.448 of 2012.

4.The Learned counsel for the Petitioner takes a plea that the petition mentioned properties in I.A.No.448 of 2012 were already

mortgaged and some of the properties do not belong to the Petitioner/Defendant and these essential facts were not looked into by the trial Court at the time of passing the impugned order.

5.It is represented on behalf of the Petitioner that the impugned order passed by the trial Court does not spell out that the Respondent/Plaintiff has made out a prima-facie case for passing of an interim order in the present case.

6.Finally, it is the stand of the Petitioner that the trial Court should have adhered to the requirements of Or.38 R.5 of the Civil Procedure Code before passing the order directing the Petitioner/Defendant to furnish security.

7.It cannot be forgotten that the power under Or.38 R.5 of the Civil Procedure Code is ofcourse, a drastic one and attachment before judgment is not to be granted merely for the asking, in the considered opinion of this Court. Also that, the ingredients of Or.38 R.5 of the Civil Procedure Code cannot be employed as a lever for the Plaintiff to coerce the Defendant to come to terms, as per decision ***T.Srinivasan V. V.Srinivasan [Air 1985 Mad 269]***. As

a matter of fact, vague allegations are not enough. Before exercising jurisdiction under R.5 of Or.38 of the Civil Procedure Code and passing orders for attachment of properties before judgment, a Court of Law is to subjectively satisfy itself of the practical certainty of the Plaintiff's success and of the existence of a peril that the Defendant is doing all such acts with dishonest intention of defeating or delaying the possible Decree. When a Court of Law feels that the interest of the Plaintiff is to be safeguarded, then, it is always desirable to call upon the opposite side to furnish security. A Court of Law must not only be satisfied on the material, but also state so in the order. A mere mechanical verbatim reproduction of the wording employed in the rule, without any supporting material is not adequate. Even where the Plaintiff succeeds in establishing that the Defendant is attempting to remove or dispose of his assets, if it is found prima-facie that there is no reasonable chance of the Decree being passed in the suit, then, the Court may not exercise power under Or.38 R.5 of the Civil Procedure Code, in the considered opinion of this Court.

8.In the present case, on going through the impugned order dated 23.01.2012 in I.A.No.448 of 2012 in O.S.No.338 of 2011, on

the file of the trial Court, it is observed to the effect that "Respondent is directed to furnish the security for suit claim on or before 13.02.2013, failing which further orders will be passed. Call on 13.02.2013". This Court is of the earnest view that the order impugned is bereft of qualitative and quantitative details/reasons. Obviously, the trial Court had straight away passed the impugned order and there is no indication in the order that the trial Court had subjectively satisfied itself in arriving at a conclusion while directing the Respondent (Revision Petitioner/Defendant to furnish security for the suit claim on or before 13.02.2013, failing which further orders would be passed). Suffice it for this Court to point out that the said order is a cryptic and non speaking one. To put it succinctly, in the impugned order, there is no outline of process of reasoning and it is like the face of an inscrutable sphinx. On this score alone, this Court without going into the merits of the matter and also not delving deep, simpliciter, sets aside the said order in I.A.No.448 of 2012 in O.S.No.338 of 2011, on the file of the trial Court because of the reason, the same is not legally tenable one. Consequently, the Civil Revision Petition succeeds.

9.In fine, the Civil Revision Petition is allowed and the

impugned order dated 23.01.2012 in I.A.No.448 of 2012 in O.S.No.338 of 2011, on the file of the trial Court is hereby set aside by this Court for the reasons assigned in this Civil Revision Petition. The Learned II Additional Subordinate Judge, Erode is directed to take up the I.A.No.448 of 2012 in O.S.No.338 of 2011 on its file and to pass afresh a reasoned speaking order on merits (ofcourse in a qualitative and quantitative terms) in a dispassionate manner (by adhering to the Principles of Natural Justice, uninfluenced and untrammelled with any of the observations made by this Court in this Revision). Consequently, connected Miscellaneous Petition is also closed. No costs.

10.Inasmuch as the suit is of the year 2011 and nearly five years have rolled up, this Court in furtherance of substantial cause of justice, directs the trial Court to dispose of the I.A.No.448 of 2012 afresh, within a period of two weeks from the date of receipt of a copy of this order. Liberty is granted to the respective parties to raise all factual and legal pleas before the trial Court at the time of fresh hearing of I.A.No.448 of 2012 in O.S.No.338 of 2011.

01.03.2016

Index : Yes
Internet : Yes
DP

To

The II Additional Sub Court,
Erode.

M.VENUGOPAL, J.

DP

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