



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2016

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1060 of 2016

and

C.M.P(MD)No.9482 of 2016

N.Suresh ...Appellant/1st respondent/1st defendant
Vs.

1.T.Donald Serge

.. 1st respondent/Petitioner/Plaintiff

2.Bharat Petroleum Corporation,
rep. By its Territory Manager,
B.G.Good Shed Road,
Thatchanallur,
Tirunelveli - 627 358.

...2nd Respondent/2nd respondent/2nd defendant

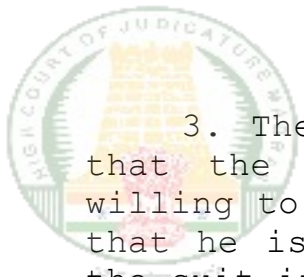
PRAYER:- Civil Miscellaneous Appeal filed under Section 104 r/w Order 43 Rule 1(q) of C.P.C, against the impugned order, dated 09.03.2016 passed in I.A.No.29 of 2016 in O.S.No.3 of 2016 on the file of the Principal District Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.S.Raja Prabu
For R-1 : Mr.N.G.A.Nataraj for
Mr.S.Meenakshi Sundaram

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order, dated 09.03.2016 passed in I.A.No.29 of 2016 in O.S.No.3 of 2016 on the file of the learned Principal District Judge, Kanyakumari District at Nagercoil.

2. The contention of the appellant is that the first respondent filed a suit in O.S.No.3 of 2016 for realization of Rs.1,04,50,000/- along with interest at the rate of 12% per annum from the date of filing of the suit. Along with the said suit, the first respondent/plaintiff filed an application in I.A.No.29 of 2016 under Order 38 Rule 5 C.P.C., for attachment of the property. The learned Principal District Judge, Kanyakumari District, at Nagercoil, issued notice to the appellant to furnish security under Order 38 Rule 5 C.P.C and the same was not complied with by the appellant and consequently, the property belongs to the first respondent. The property was attached by an order, dated 09.03.2016. Aggrieved by the said order, he has filed this Civil Miscellaneous Appeal.



3. The learned counsel appearing for the appellant contended that the appellant will not alienate the property and he is willing to file an affidavit to that effect. He further contended that he is questioning the prayer sought for by the plaintiff in the suit itself as premature.

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4. The learned counsel for the first respondent opposed this appeal by stating that the learned Principal District Judge, vide order dated 04.02.2016, directed the appellant to furnish security for the suit claim by 06.02.2016 and there was a conditional order stating that in the event of not furnishing security, attachment before judgment will be passed. Thereafter, the petition was adjourned to 09.02.2016 for furnishing security. On that day also, the appellant failed to furnish security as ordered by the trial Court. Since the appellant intentionally was not complying with the order for furnishing security, the learned Judge, attached the property under Order 38 Rule 6 of C.P.C and there is no infirmity in the order passed by the learned trial Judge and accordingly, this appeal is to be dismissed.

5. Heard the submissions made on either side and perused the materials available on record.

6. Considering the facts and the circumstances of the case and it is a case of recovery of money and opportunity was given to the appellant/1st defendant to furnish security and the same was not availed by the appellant and hence, further opportunity cannot be given to the appellant and therefore, the learned Judge rightly ordered for an attachment of the property belongs to the appellant herein.

7. Further, the contentions raised by the learned counsel for the appellant that the prayer sought for by the first respondent/plaintiff is premature, cannot be adjudicated before this Court in the present appeal and the merits and demerits of the suit is to be adjudicated by conducting full-fledged trial and therefore, this Court is not inclined to consider the submissions made by the learned counsel appearing for the appellant.

8. In the result, this Court find no merits in the present appeal and accordingly, the same is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar



To,

1. The Principal District Judge,
Kanyakumari District at Nagercoil.

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2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

pm

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C.M.A.No.1060 of 2016
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