



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2016

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THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (MD) No. 591 of 2014
and
M.P. (MD) No. 1 of 2014

Arul .. Petitioner/2nd Defendant

Vs.

1. C.Muthu	.. 1 st Respondent/Plaintiff
2. Catharin Nirmala	.. 2 nd Respondent/1 st Defendant
3. Lawrance	.. 3 rd Respondent/3 rd Defendant
4. Victor	.. 4 th Respondent/4 th Defendant
5. Margirithammal	.. Respondent/5 th Defendant

PRAYER: Petition filed under Article 227 of Constitution of India, to pass an order setting aside the order dated 20.07.2012 passed in the unnumbered application in I.A.No. of 2012 in O.S.No.324 of 2012 on the file of the learned III Additional Subordinate Judge, Madurai, and directing him to take the application on file and number the same and dispose it on merits.

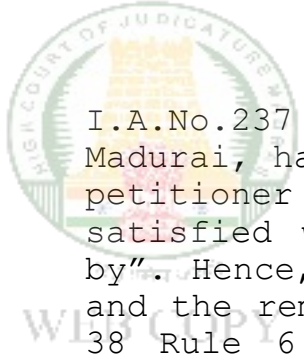
For Petitioner : Mr.J.Barathan
For Respondents : Mr.F.X.Eugene

O R D E R

Challenging the order passed by the learned III Additional Subordinate Judge, Madurai, in unnumbered Interlocutory application of 2012 in O.S.No.324 of 2012, dated 20.07.2012, the present Revision is filed.

2. Heard the learned counsel for the petitioners as well as the respondents.

3. According to the petitioner, the first respondent herein/plaintiff filed a suit in O.S.No.324 of 2012 against the petitioner and others for recovery of money. Along with the suit, the first respondent herein filed an application in I.A.No.237 of 2012 under Order 38 Rule 5 of C.P.C., to attach the property before Judgment. Though the petitioner and the other defendants had not furnished any security, the Court below passed an order of attachment of the property before Judgment. Thereafter, the Revision petitioner filed an application under Order 38 Rule 6(2) E Section 151 of C.P.C., to withdraw the order passed by the Court below in



I.A.No.237 of 2012, dated 11.04.2012. The learned District Munsif, Madurai, has rejected the said application by stating that since the petitioner did not furnish the security, the Court having not satisfied with the counter averments had passed the order "Attach by". Hence, the said order was passed on merits by the Court below, and the remedy of the petitioner lies elsewhere and not under Order 38 Rule 6(2) Section 151 of C.P.C. The learned counsel for the respondents has objected for numbering the said application. The remedy is only by way of filing an appeal against the attachment order passed.

4. The learned counsel for the petitioner submitted a Judgment reported in 2000 (IV) CTC 543, Pillai, R.S. V. M.L.Perachi @ Selvi, wherein it has held as follows:-

"24. Rule 6(2) has to be divided into two parts the first being.

'Where the defendant shows such cause or furnishes security required, and the property specified or any portion of it has been attached the Court shall order attachment to be withdrawn.'

Rule 4 is to the effect that the defendant may be asked to show cause why he should not furnish the security. The word 'such occurring in Rule 6(2) refers to that and it should be understood that the defendant showed such cause or in other words the defendant showed sufficient cause.

Again this part of the Rule deals only with cases where there has already been an attachment and it is evident by the presence of the word 'and'.

25. The second part of the Rule reads:

"or make such other order as it thinks fit."

This part of the Rule cannot be read in isolation and it must be read with or taken as only referable to, the first part of the Rule. The conclusion is on the basis of the following two reasonings:

The word other occurring in the second part of the Rule would only mean an order that may be passed after withdrawing the attachment as contemplated in the first part of the Section. For instance, the Court after hearing the defendant may come to the conclusion that the order of attachment is not necessary and that the plaintiff has made out a prima facie case only in respect of a portion of the claim, and in such an event, the Court may direct the defendant to furnish security after withdrawing the



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attachment.

The second reasoning is that if really the legislature intended the Rule 6(2) to deal with cases including the cases, where there was no prior attachment then that would have been made clear either by enacting a separate sub clause say for instance as Rule 6(3) or by making it sufficiently clear in Rule 6(2) itself. In this context, yet another aspect to be noted is that the entire Rule 6(2) is in one single sentence."

In the light of the aforesaid Judgment, the Court below is directed to number the present application in the aforesaid suit. Therefore, this Court is inclined to direct the learned III Additional Subordinate Judge, Madurai, to number the unnumbered I.A.No. of 2012 in O.S.No.324 of 2012.

5. Hence, the order passed by the learned III Additional Subordinate Judge, Madurai, in unnumbered application in I.A.No. of 2012 in O.S.No.324 of 2012, dated 20.07.2012 is set aside and the learned III Additional Subordinate Judge, Madurai, is directed to number the unnumbered I.A.No. of 2012 in O.S.No.324 of 2012, if it is otherwise in order, subject to the placing of the objections, at later stage.

6. With the above directions, the Civil Revision petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The III Additional Subordinate Judge,
Madurai.

+1cc to Mr.F.X.Eugene,Advocate, SR No 68054

pmu

ms/rr/me/20.01.2017/3p.3c

ORDER MADE IN

C.R.P.(MD)No.591 of 2014

and

M.P.(MD)No. 1 of 2014