



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.1637 of 2016 (NPD)

and

CMP (MD) No. 7972 of 2016

V. Rajendran

.....Petitioner/ Petitioner

Vs.

S. Seenivasan

....Respondent/Respondent

PRAYER: Civil Revision Petition is filed, under section 115 of the Civil Procedure Code, to set aside the order passed by the IV Additional District Court, Madurai in I.A.No.626/2015 in O.S.No.112/2015, dated 30.10.2015 by allowing the C.R.P.

For Petitioner : Mr. D.Ghandiraj

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order passed by the IV Additional District Court, Madurai in I.A.No.626/2015 in O.S.No.112/2015, dated 30.10.2015.

2.The petitioner is the plaintiff. The respondent is the defendant. The petitioner filed suit in O.S.No.112 of 2015 before the IV Additional District Court, Madurai for recovery of Rs.15,06,750/- based on a promissory note, dated 18.01.2013. Along with suit, he filed I.A.No.626 of 2015 for a direction directing the respondent to furnish security for the suit claim within time fixed by the Court failing which, pass an order of attaching the property described in the petition.

3.The petitioner submitted that the respondent is trying to alienate the property with intention to defeat and delay the interest of the petitioner in the event of the decree being passed in favour of the petitioner.

4.The respondent filed counter affidavit and denied the execution of promissory note and his liability to pay suit claim. He also stated that the petitioner is his own cousin and both jointly invested equally a sum of Rs.36,00,000/- in Hotel business and suffered loss. The petitioner wanted to leave the business and demanded his share to be given to him. The respondent by giving <https://hcservices.ecourt.gov.in/hcservices/> and selling gold jewels paid a sum of Rs.21,20,000/- on various dates. Suppressing the fact, the petitioner has filed the suit for recovery of money. The



respondent did not execute any promissory note as alleged by the petitioner. Therefore, the respondent has given a complaint to the Superintendent of Police and enquiry is pending before the Deputy Superintendent of Police, Samayanallur. The petitioner has not furnished any details about intention of the respondent about selling of the property. It is well settled that the attachment cannot be ordered on bald allegations made by the petitioner.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record and relying on the Judgment of this Court, dismissed the application holding that by mere bald allegation that the respondent is trying to alienate the property, is not sufficient for getting an order to furnish the security or attachment before the Judgment. Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the learned Judge has not properly appreciated the provisions of Order 38 Rule 5 & 6 of C.P.C., and failed to see that the petitioner filed an affidavit of third party to prove his contention that the respondent is trying to alienate the property. The learned Judge wrongly considered the judgment relied on by the learned counsel for the respondent and dismissed the application.

7.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

8.From the materials available on record and averments made in the affidavit filed in support of the petition for a direction to furnish security to the suit claim, failing which, order of attachment before the judgment the petitioner has not furnished any details as to what are the steps the respondent has taken to sell the property and has not furnished the names and other details to whom the respondent is trying to sell the property. It is well settled that the Court cannot by mere asking by one party, direct the other party to furnish security, failing which, order attachment. It is also well settled that based on bald allegation in the affidavit, court cannot exercise its discretionary jurisdiction under Order 38 Rule 5 & 6. The learned Judge has exercised his jurisdiction conferred on him properly and there is no illegality or irregularity in the order passed by the learned IV Additional District Judge, Madurai warranting interference by this Court.



9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

WEB COPY

Sd/
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

The IV Additional District Court,
Madurai.

+1cc to M/s.D.Gandhiraj, Advocate, in SR No.81761

am

AAM RR BS 30.01.2017 3P 3C

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