



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2016

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(MD).No.321 of 2016 and
CMP(MD).Nos.8965 and 1394 of 2016

P. Muthupazhani : Revision Petitioner /Respondent/
Defendant

Vs.

P. Boomi : Respondent/Petitioner/Plaintiff

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 08.12.2015 made in I.A.No.314 of 2015 in O.S.No.303 of 2015 on the file of the Principal Sub Court, Dindigul.

For Petitioner : Mr. R. Devaraj

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 08.12.2015 made in I.A.No.314 of 2015 in O.S.No.303 of 2015 on the file of the Principal Sub Court, Dindigul.

2. According to the petitioner, the respondent herein filed suit in O.S.No.303 of 2015 on the file of the Principal Sub Court, Dindigul, for recovery of a sum of Rs.3,08,400/- with future interest at 6% per annum of Rs.2,00,000/-. The revision petitioner entered into an agreement on 27.03.2013 to carry out lime stone quarrying from the property under the lease and the period of Lease was for 22 years from the date of getting mining lease from the State Government. Without the knowledge of the revision petitioner, the respondent / plaintiff had executed a registered lease deed for 29 years to one M/s. Dindigul M.M. Detergental Company Pvt. Limited. In the aforesaid suit, the respondent filed an application in I.A.No.314 of 2015 directing the revision petitioner / defendant to furnish the security of Rs.4,00,000/-, failing which, the property described in the schedule was sought to be attached. In the aforesaid application, the revision petitioner / defendant had filed a counter statement



stating that there is no necessity to furnish the security as claimed by the respondent and as the lease agreement has expired, the suit is not maintainable. Without considering the said statement the Court below has allowed the application directing the revision petitioner to furnish the security for the aforesaid recovery of amount of Rs. 3,08,400/- on or before 06.01.2016 failing which the property will be attached. Against that order only the Civil Revision Petition has been filed before this Court.

3. The learned counsel for the petitioner relied on the judgement reported in 2013 (4) MLJ 134 (*Lylod Insulations (India) Ltd., vs. Makwuds India P. Ltd.*), wherein this Court has stated that "in view of the affidavit filed by the respondent, undertaking not to alienate or encumber properties mentioned in affidavit, till disposal of original petition, further orders not necessary. The original side appeal stood closed."

4. As far as the present case is concerned, even though notice was served none appeared for the respondent. As rightly pointed out by the learned counsel for the petitioner that undertaking affidavit filed by the revision petitioner was not at all considered by the trial Court. Without giving any valid reason, the direction of the Trial Court to furnish the security is unsustainable in law.

5. Therefore, in the light of the decision of this Court reported in 2013 (4) MLJ 134 (*Lylod Insulations (India) Ltd., vs. Makwuds India P. Ltd.*) and the submission of the learned counsel for the revision petitioner, I am inclined to set aside the order passed by the learned Principal Subordinate Judge, Dindigul. Accordingly, the order passed by the learned Principal Subordinate Judge, Dindigul, dated 08.12.2015 made in I.A.No.314 of 2015 in O.S.No.303 of 2015 is hereby set aside and the matter is remanded back to the trial Court for considering the aforesaid Interlocutory Application afresh and the trial Court is directed to dispose of the said Interlocutory Application within a period of six weeks from the date of receipt of a copy of this order.

6. With the above direction, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar()

/True copy/

Sub Assistant Registrar



To
The Principal Subordinate Judge, Dindigul.

Copy to:
The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. R. Devaraj, Advocate, SR.No:67194

trp
AE/CM MSA/21.02.2017/3P/4C

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