

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.1797 of 2016
and CMP.No.13317 of 2016

Jalandhar ... Appellant/Defendant
vs.

Kumarasamy ... Respondent/Plaintiff

Civil Miscellaneous Appeal is filed under Order 43 Rule [1] [q] of the Civil procedure, 1908 of CPC, against the Petition and Order dated 18/03/2016 made in I.A.No.38 of 2016 in O.S.No.23 of 2016. On the file of the Principal District Court, Namakkal.

For Appellant : Mr.Zeenath Begum
For Respondents : Mr.P.Mathivanan

JUDGMENT

This appeal is filed against an order directing attachment of immovable property belonging to the appellant. The respondent had filed a the suit for recovery of a sum of Rs.19,03,500/- due on a promissory note. Along with the suit, the respondent had filed I.A.No.38 of 2016 under Order 38 Rule 5 CPC seeking attachment of the immovable property.

2.In the said application, notice returnable by 18.03.2016 was ordered on 28.01.2016. Upon Service of notice, the appellant's counsel filed vakalat on 17.06.2016 and on the same day itself, the learned Trial Judge had observed that security has not been furnished and directed attachment of the property. Aggrieved by the same, the defendant is before this Court, with this appeal.

3.I have heard Ms.Zeenath Begum, learned counsel for the appellant and Mr.P.Mathivannan, learned counsel for the respondent.

4.I find that the procedure adopted by the learned Trial Judge, does not confirm to the mandatory requirements of the Order 38 Rule 5 of Civil Procedure Code. There was no direction to the furnish security in the original order directing issuance of notice dated 28.01.2016. Therefore, the order of attachment has been passed without affording an opportunity to the appellant to furnish security. Hence, the order of attachment is liable to be set aside.

5.This appeal is therefore allowed. The order of attachment is set aside. The application in I.A.No. 38 of 2016 is restored to the file of the Principle District Judge, Namakkal, who shall rehear I.A.No.38 of 2016 and pass orders afresh after affording reasonable opportunity to the appellant. Consequently, connected Miscellaneous Petition is also closed.

6.It is also found that the appellant herein, who is the defendant in the suit, has not filed the written statement. Hence, the appellant is directed to file the written statement by 31.10.2017 and the learned Principal District Judge, Namakkal, is directed to dispose of the suit on or before 30.04.2018 and report such disposal to this Court.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rm/ggi

To

The Principal District Judge,
Namakkal.

+1cc to Mr.P.Mathivanan, Advocate Sr. 66097

+1cc to M/S.Zeenath Begum, Advocate Sr. 65891

C.M.A.No.1797 of 2016
and CMP.No.13317 of 2016

KK(CO)
VR(03/10/2017)