

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1798 of 2017  
& C.M.P.No.8491 of 2017

Arumugam

.. Petitioner

Vs.

Rajathi Ammal

.. Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree in CMA.No.4 of 2016 dated 21.09.2016 on the file of the Principal District Judge at Puducherry confirming the order in I.A.No.83 of 2015 in I.A.No.1034 of 2014 in O.S.No.4 of 2014 dated 25.11.2015 on the file of the Principal Sub Court at Puducherry.

For Petitioner : Mr. S.Vimal

ORDER

The Civil Revision Petition has been filed praying to set aside the judgment and decree in CMA.No.4 of 2016 dated 21.09.2016 on the file of the Principal District Judge at Puducherry thereby confirming the order in I.A.No.83 of 2015 in I.A.No.1034 of

2014 in O.S.No.4 of 2014 dated 25.11.2015 on the file of the Principal Sub Court at Puducherry.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit in O.S.No.165 of 2014 on the file of the Principal Sub Court, Puducherry for recovery of money. Along with the suit, the respondent filed an application in I.A.No.1034 of 2014 seeking a direction to the petitioner to furnish security for the suit amount with subsequent interest and cost within the time fixed by the Court, failing which, to order attachment of the petition mentioned property belonging to the petitioner before judgment. The petitioner filed counter and denied the averments stated in the affidavit filed in support of the application in I.A.No.1034 of 2014. According to the petitioner, the petition mentioned property is the only immovable property owned by the petitioner and the respondent is making arrangements to alienate the property with an intention to defeat the interest of the petitioner.

2.1 The materials on record shows that notice was ordered to the petitioner to furnish security to the suit claim, but

the petitioner did not appear on the date of hearing and no counter was filed. Even though sufficient time and opportunity was given to the petitioner to file counter, no counter was filed. Hence, the learned Judge had ordered attachment of property vide order dated 13.02.2015.

2.2. Aggrieved by the said order, the petitioner filed an application in I.A.No.83 of 2015 to set aside the order dated 13.02.2015 ordering attachment of property in I.A.No.1034 of 2014. According to the petitioner, it took time for him to furnish the documents required by the counsel for preparing the counter and hence he could not file the counter on the date fixed by the Court. It is contended by the petitioner that non-filing of counter in I.A.No.1034 of 2014 is neither willful nor wanton and therefore, the order of attachment passed by the learned Judge is not on merit. The petitioner also denied the various averments made by the respondent in the application filed for attachment of property in I.A.No.1034 of 2014. The learned Judge after considering and analysing the case under Section Order XXXVIII Rule 5 and Rule 6, has allowed the application in I.A.No.83 of 2015 vide order dated 26.11.2015, directing the petitioner to furnish security for a sum of

Rs.2,70,941/- on or before 15.12.2015, failing which the order of attachment made in I.A.No.1034 of 2015 becomes absolute.

2.3. Against the said order dated 26.11.2015, the petitioner has filed an appeal in CMA.No.4 of 2016 before the Principal District Court, Puducherry. The learned Appellate Judge has dismissed the appeal vide order dated 21.09.2016. The Appellate authority has held that the trial Court had followed the procedure in accordance with law and granted opportunity to furnish security, but the petitioner, inspite of extension of time being granted to him by the trial Court to furnish security, failed to furnish the same as directed. In the said appeal filed by the petitioner, he also contended that he is an agriculturist and this ground was ignored by the trial Court. In answer to this contention, the Appellate Court has taken a stand that no document was produced by the petitioner before the trial Court and hence the Appellate Court is not inclined to agree with the said contention.

3. Against the order of dismissal dated 21.09.2016 in CMA.No.4 of 2016, the petitioner is before this Court in this Civil

Revision Petition.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. The case of the petitioner is that he has given a cheque for Rs.2,60,000/- to the respondent and the said cheque was dishonoured on presentation. In the application filed by the respondent in I.A.No.1034 of 2014 for attachment of property before judgment, the petitioner was given time to furnish security to suit amount and even after extension of time granted to the petitioner, the petitioner did not furnish security and in the result, attachment was ordered by the trial Court. Challenging the order of attachment, the petitioner filed I.A.No.83 of 2015 to set aside the order of attachment. The said application in I.A.No.83 of 2015 was allowed vide order dated 26.11.2015 directing the petitioner to furnish security for the suit amount. Against the said order dated 26.11.2015, the petitioner has filed an appeal in CMA.No.4 of 2016. The said appeal was dismissed by the appellate Court vide order dated 21.09.2016, challenging which, the Civil Revision Petition is filed. It appears that the petitioner has not denied the averment

that the petitioner is taking steps to sell the property as alleged by the respondent.

6. Considering the submissions made by the learned counsel for the petitioner and on going through the records placed before this Court, I hold that both the trial Court and Appellate Court have properly appreciated the facts and passed orders, and therefore, the orders of the Courts below need not be interfered with in this revision. Even in the present revision petition filed before this Court, the petitioner has not stated that he has no intention to sell the property. In view of the same, I do not find any illegality or irregularity in the orders of the Courts below warranting interference by this Court.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2017

Speaking Order/Non-speaking Order  
Index : Yes  
ds

V.M.VELUMANI, J.

ds

To

- 1.The Principal Sub Court  
Puducherry.
- 2.The Principal District Judge  
Puducherry.

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