

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.343 of 2017
and
C.M.P.No.1565 of 2017

S.Manikandan

.. Petitioner

Vs.

A.Shankar

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 04.10.2016 made in I.A.No.837 of 2015 in O.S.No.1309 of 2014 on the file of the First Additional Sub-Court, Coimbatore.

For petitioner : Mr.I.Abrar Md. Abdullah for M/s.V.P.K.Gowtham

ORDER

The revision is filed challenging the order passed in I.A.No.837 of 2015 in O.S.No.1309 of 2014 under Order 38 Rule 5 CPC.

2. Originally, the respondent/plaintiff has filed the said I.A. to direct the revision petitioner/defendant to furnish security to the suit claim, in which notice was ordered. On 04.12.2015, it was posted for counter of the revision petitioner/defendant. Again on 21.01.2016, when the matter was

posted for filing of counter, there was no representation, and therefore, the revision petitioner/defendant was directed to furnish security, but on the same day, as there was no representation for the revision petitioner, he was set ex-parte and an order was passed to furnish security.

3. Immediately, I.A.No.109 of 2016 was filed by the revision petitioner herein for setting aside the ex-parte order, and the said I.A.No.109 of 2016 had been adjourned for few hearings. On 08.09.2016, the revision petitioner/defendant was directed to furnish security by 04.10.2016. Since the revision petitioner has not furnished security, the property was sought to be attached. It was posted again on 24.10.2016 and thereafter, it was adjourned to 24.11.2016, on which date, since I.A.No.109 of 2016 is pending, and for the reason that the respondent/plaintiff was unwell, the property could not be ordered to be attached. Now it is stated by the learned counsel for the revision petitioner that I.A.No.109 of 2016 was posted on 15.02.2017 for ordering attachment. Against the said order of attachment, only an appeal would lie. However, it is contended by the learned counsel for the petitioner that revision is maintainable, in view of the fact that the order is passed under Order 38 Rule 5 CPC, wherein he was issued notice to show cause as to why he should not furnish security and as there was no final order passed under Rule 6 of Order 38 CPC, only the revision is maintainable. Learned counsel

also relied on a decision of a Division Bench of this Court reported in AIR 2000 Madras 483 (R.S.Pillai Vs. Smt.M.L.Peratchi alias Selvi and others) in support of his submissions.

4. Order 38 Rule 6 CPC specifically states that where the defendant fails to show cause as to why he should furnish security or fails to furnish security required, within the time frame fixed by the Court, the Court may order that the property mentioned be attached. Admittedly, as early as on 21.01.2016, the revision petitioner/defendant was asked to furnish security. Time was given till 11.02.2016 to furnish security. The revision petitioner deliberately remained ex-parte and filed I.A.No.109 of 2016 to set aside the ex-parte order. Even thereafter, the attachment was not done. Only on 04.10.2016, as the security was not furnished, the attachment was ordered, by which time, it was more than one year for the revision petitioner. Even after that, till today, for some reason or the other, the property was not attached and the revision petitioner/defendant also has not furnished any security. By virtue of the order dated 04.10.2016, which is an order passed only under Order 38 Rule 6 CPC, only an appeal is maintainable. However, since the application to set aside the ex-parte order is pending, this Court is inclined to grant the revision petitioner further time to furnish security.

5. Accordingly, time is extended and the revision petitioner/defendant shall furnish security within a period of eight weeks from the date of receipt

of a copy of this order. On furnishing such security, the trial Court is first directed to dispose of I.A.No.109 of 2016 within a period of two weeks thereafter. The trial Court shall also dispose of I.A.No.837 of 2015 within four weeks thereafter, after giving sufficient opportunity to both parties.

6. With the above observations and directions, the Civil Revision Petition is disposed of. No costs. C.M.P. is closed.

03.02.2017

Index: Yes/no

Internet: Yes/no

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Copy to

The First Additional Sub-Judge, Coimbatore.

PUSHPA SATHYANARAYANA, J

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