

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD) Nos.284 of 2015 and 285 of 2015
and M.P.Nos.1 & 1 of 2015

Santhammal .. Petitioner in both C.R.Ps

vs

Arangasamy .. Respondent in
CRP(PD)No.284 of 2015

Ponnusamy .. Respondent in
CRP(PD)No.285 of 2015

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal orders dated 12.08.2014 passed by the learned Subordinate Judge, Namakkal in I.A.No.705 of 2014 and I.A.No.709 of 2014 in O.S.No.220 of 2014 and O.S.No.222 of 2014.

For Petitioner
in both C.R.Ps

:Mr.P.Valliappan

For Respondents

:Served-No Appearance

COMMON ORDER

Heard the learned counsel for the petitioner. Despite service being effected on the respondents, there was no representation on their behalf either in person or through the counsel.

2. The defendant is the revision petitioner in both the revisions. The revisions are filed, aggrieved by the orders passed by the Court below in ordering attachment before judgment in the applications filed by the respondents/plaintiffs under Order 38 Rule 5 of the Code of Civil Procedure.

3. The case of the revision petitioner is as follows:

(i) The respondents/plaintiffs herein filed two separate suits for recovery of a sum of Rs.2,50,000/- each, from the revision petitioner/defendant on 30.07.2014. Pending suits, the respondents have filed applications seeking attachment of the schedule mentioned property of the revision petitioner before judgment.

(ii) Though counter affidavits were filed by the revision petitioner/defendant on 12.08.2014, on the very same day, the impugned orders were came to be passed by the Court below, for attachment of the property.

(iii) Challenging the same, the above revisions are filed.

4. It is the contention of the learned counsel for the revision petitioner that the orders passed by the learned Subordinate Judge is a non-speaking order and that he has erroneously allowed the applications filed by the respondents. It is further contended that even if the defendant failed to furnish the security, it does not automatically entitle the plaintiffs for attachment of the suit property. It is also not the case of the plaintiffs that the defendant is trying to dispose of the suit property in order to defeat the claim of the respondents.

5. The Hon'ble Supreme Court as well as this Court has time and again held that the position of Order 38 Rule 5 of the Code of Civil Procedure cannot be used as a lever for settling the suit claim. As the power given under Order 38 Rule 5 CPC is an extraordinary power, it

should be exercised sparingly and not mechanically or for the mere asking. The conditional order may still convert an unsecured debt to a secured debt. Even otherwise the plaintiff should show that there is a *prima facie* case and that his claim is bona fide and valid.

6. In the case on hand, on the date when the counter credit was filed for the above applications by the revision petitioner, the impugned orders have come to be passed. The revision petitioner/defendant's counter was not even entertained. Even from the perusal of the papers on record, there is no indication that there was a direction to the defendant to furnish security. The Court below, without even examining the question whether the defendant was attempting to defeat any decree that may be passed against her, had passed the impugned order, viz., attachment before judgment, which is arbitrary and unsustainable.

7. In view of the above, the impugned orders dated 12.08.2014 passed by the learned Subordinate Judge, Namakkal in I.A.No.705 of 2014 and I.A.No.709 of 2014 in O.S.No.220 of 2014 and O.S.No.222 of 2014 are set aside and the matter is remitted back to the trial court for fresh consideration.

8. With the above direction, both the Civil Revision Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

10.01.2017

vj2

Index: Yes/No

Internet: Yes

To

The Subordinate Judge,
Namakkal

PUSHPA SATHYANARAYANA.J

vj2

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