

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 01.03.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.1994 of 2013  
and  
M.P.No.1 of 2013**

K.Venkatesan

.. Petitioner

Vs.

A.Shanmugasundaram

..Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and final order in I.A.No.219 of 2013 in O.S.No.35 of 2013, dated 26.04.2013, on the file of the 1<sup>st</sup> Additional District and Sessions Court, Tirupur.

For Petitioner : Mr.R.Krishnan

For Respondent : Mr.A.Thiyagarajan

**ORDER**

This revision petitioner as plaintiff filed a suit against the respondent herein in O.S.No.35 of 2013 before the learned District

Court, Tiruppur for recovery of amount of Rs.25,00,000/-. The revision petitioner has filed application along with the suit in I.A.No.219 of 2013 under Order 38, Rule 5 of C.P.C. to direct the defendant/respondent to furnish security for the suit claim and failure to furnish security, order attachment before judgment of the suit properties. The plaintiff stated that the defendant is making serious attempt to alienate his valuable property with a view to defeat and delay his claim. Therefore, the plaintiff has filed the above application seeking to attach the petition mentioned properties before judgment.

2.The said application was strongly objected by the respondent herein by filing counter affidavit. It is the contention of the respondent herein that all the properties mentioned in the petition schedule were mortgaged with the bank and he is not in a position to discharge the bank loan and he could not redeem the mortgage. Further, the respondent herein has no intention to dispose the suit schedule properties. All the properties are worth about more than five crores. But, the suit is filed only for the recovery of amount of Rs.25,00,000/-. Hence, he prayed for the dismissal of the said application.

3.The learned 1<sup>st</sup> Additional District and Sessions Judge, Tirupur

after hearing the arguments, was pleased to dismiss the application filed under Order 38, Rule 5 of C.P.C. by the plaintiff by order and decree dated 26.04.2013, which is impugned in this civil revision petition.

4.I heard Mr.R.Krishnan, learned counsel appearing for the petitioner and Mr.A.Thiyagarajan, learned counsel appearing for the respondent and carefully perused the records.

5.The plaintiff in a suit for recovery of money filed an application seeking for a direction against the defendant to furnish security to the suit amount, failing which ordered to attachment before judgment of the petition mentioned properties. The respondent herein filed counter affidavit wherein he has specifically stated that he has no intention to alienate the schedule mentioned properties since all the properties are under mortgage with the bank and therefore he will not sale the same. It is further stated by the respondent herein that the schedule mentioned properties are worth about more than 5 crores and out of which he has entered into sale agreement with respect of 2<sup>nd</sup> item of the properties on 16.06.2011.

6. The lower court should have recorded the undertaking when the respondent herein specifically pleaded in the counter affidavit stating that he has no intention to dispose of the petition mentioned properties. But the dismissal of the application filed by the plaintiff by the learned trial Judge is erroneous. Further, this Court could not see the intention of the respondent herein to dispose of the petition mentioned properties, since he has already entered into a sale agreement with respect of 2<sup>nd</sup> item of the petition mentioned property. Therefore, the trial Court should have directed the respondent herein at least to furnish security to the suit claim. That apart, the trial Court erroneously held that the plaintiff has not proved that the respondent herein is trying to dispose of the properties by producing acceptable evidence. The finding of the trial Court is totally perverse. When the respondent herein already was indebted and the properties are under bank mortgage, under such circumstances in order to secure the suit claim, it is just and reasonable to direct the respondent herein to furnish security to the suit claim, failure to furnish the security, order attachment before judgment of the schedule mentioned properties would meet the ends of justice in the present case on hand.

7.In the result:

(a) the civil revision petition is allowed by setting aside the order and decree made in I.A.No.219 of 2013 in O.S.No.35 of 2013 dated 26.04.2013, on the file of 1<sup>st</sup> Additional District and Sessions Court, Tirupur;

(b) the respondent herein is directed to further security to the suit claim within a period of four weeks from the date of receipt of a copy of this order, failure to furnish security as ordered above the petition mentioned properties is ordered to be attached.

(c) the trial Court is directed to dispose the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

**01.03.2017**

Note:Issue order copy on 20.06.2017  
Internet:Yes  
Index:Yes

vs

To

The 1<sup>st</sup> Additional District and Sessions Court,  
Tirupur.

**M.V.MURALIDARAN, J.**

VS

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