



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.37 of 2017

and

C.M.P. (MD) .No.303 & 5541 of 2017

L.Murari

... Appellant/2nd Respondent/
2nd Defendant

Vs.

1.Ve.Jeyaraj

... Respondent No.1/Petitioner/
Plaintiff

2.L.Mathanarajagopal

... Respondent No.2/1st Respondent/
1st Defendant

Prayer: Appeal filed under Order 43 Rule 1 of C.P.C. to set aside the fair and final order dated 19.10.2016 made in I.A.No.330 of 2016 in O.S.No.68 of 2016 on the file of the V Additional District Court, Madurai.

For Appellant : Mr.K.K.Ramakrishnan
For Respondents : Mr.M.V.Venkataseshan for R1

JUDGMENT

Heard the learned counsel on either side.

2.The appellant is the second defendant in the suit. The first respondent herein filed O.S.No.68 of 2016 on the file of V Additional District Judge, Madurai for recovery of a sum of Rs.13,20,585/- with 6% interest. The first respondent has obtained an order of attachment in I.A.No.330 of 2016 by order dated 19.10.2016. Challenging the order of attachment, this appeal has been filed.

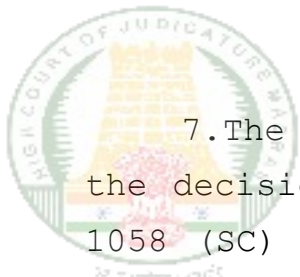


3.The learned counsel for the appellant reiterated the contentions set out in the memo of appeal. The learned counsel for the first respondent herein/plaintiff sought to sustain the impugned order.

4.It is seen that there was a transaction between the plaintiff and the appellant herein. The appellant had received a sum of Rs.75,10,100/- from the plaintiff. He had repaid a sum of Rs.1,00,00,000/- by demand draft on 29.01.2016. According to the plaintiff, the appellant still owes him money and that for recovery of deficit interest amount, he has filed the said suit. In order to secure the suit claim, he took out an application for attachment. The appellant had earlier sold away some of his properties. Therefore, in order to restrain him from disposing the remaining properties, the Court below has proceeded to attach the petition mentioned items.

5.The appellant had enclosed three demand drafts totalling a sum of Rs.1,00,00,000/- along with his letter dated 21.12.2015. Receipt of the said letter is admitted. The appellant had made it clear in the said letter that the said demand drafts are towards full and final settlement of whatever the claim that the plaintiff may have against him. The plaintiff did not issue an immediate rejoinder. He also did not return the demand drafts. Only after encashing the demand drafts, he has chosen to send reply and thereafter file the present suit. The original transaction between the plaintiff and the defendant did not stipulate any payment of interest. When there was no contractual stipulation to pay interest, the suit claim itself has become doubtful.

6.The learned counsel for the appellant would plead that in fact he has paid excess amount and that therefore, it is he who must file a suit for recovery of the said excess amount. In view of the aforesaid premises, I am of the view that the learned trial Judge erred in granting an order of attachment.



7.The learned counsel for the appellant would place reliance on the decision of the Hon'ble Supreme Court reported in (2008) 2 MLJ 1058 (SC) - Raman Tech & Process Engg. Vo. V. Solanki Traders and submit that the Trial Court must be prima facie satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. In this case, such satisfaction has not been arrived at. As remarked by the Hon'ble Supreme Court, the purpose of Order 38 Rule 5 of C.P.C. is not to convert an unsecured debt into a secured debt. In this case, the plaintiff has attempted to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim. Such attempts ought not to have encouraged. I therefore, set aside the order dated 19.10.2016 made in I.A.No.330 of 2016 in O.S.No.68 of 2016 on the file of the V Additional District Court, Madurai. It is made clear that the main suit shall be disposed of uninfluenced by the observations made herein.

8.This civil miscellaneous appeal stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The V Additional District Court, Madurai.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K.K.RAMAKRISHNAN, Advocate SR.No.84752.
+1cc to M/S.M.V.VENKATASESHAN, Advocate SR.No.84641.

C.M.A. (MD) No.37 of 2017
and
C.M.P. (MD) .No.303 & 5541 of 2017
31.10.2017