



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.12.2017
(Reserved on 10.11.2017)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD) No.1915 of 2017

P.Natarajan ...Petitioner/Petitioner/
Respondent/Defendant
vs.

Madurai Central Market Vegetable
and Perishable Commodities Merchants
Co-ordinated Association, Rep by its President,
S.Manuel Jayaraj, Commercial Complex,
Vilankudi, Madurai. ... Respondent/Respondent/
Petitioner/Plaintiff

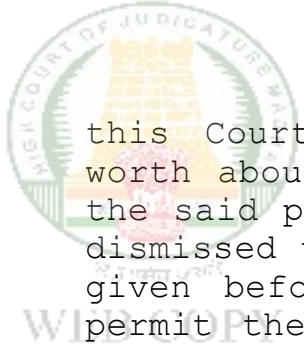
Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.07.2017 in I.A.No.98 of 2017 in I.A.No.219 of 2014 in O.S.No.134 of 2014, on the file of Ist Additional District Judge, Madurai.

For Petitioner : Mr.AN.Ramanathan
For Respondent : Mr.J.Mathesh

ORDER

The petitioner, who is the defendant in O.S.No.134 of 2014, has filed the above Civil Revision Petition, challenging the fair and decreetal order dated 28.07.2017 in I.A.No.98 of 2017 in I.A.No.219 of 2014 in O.S.No.134 of 2014, on the file of the learned I Additional District Judge, Madurai.

2.The respondent/plaintiff has filed the suit in O.S.No.134 of 2014 for recovery of money. During the pendency of the suit, the plaintiff has filed an application under Order 38 Rule 5 and Section 151 C.P.C., in I.A.No.219 of 2014 to attach the property of the defendant before judgment and the Trial Court allowed the petition, against which, the defendant filed CMA.No.292 of 2015 before the High Court and in that CMA, the revision petitioner had given an undertaking that he would not alienate the petition mentioned properties till the disposal of the suit and recording the said undertaking, CMA was disposed of. Thereafter, the petitioner has filed the present interlocutory application to withdraw the earlier undertaking and also sought for permission of



this Court to give petition mentioned property belongs to him worth about Rs.24,00,000/- undertaking that he would not alienate the said property till the disposal of the suit. The Court below dismissed the said I.A holding that since the undertaking has been given before the High Court, the Court does not have power to permit the petitioner to withdraw the undertaking. It was also held that the suit is for recovery of money and it is also ripe for trial and therefore, the petitioner can very well co-operate for early disposal of the suit instead of filing the applications by preventing the Court from taking up the main case for trial. Hence, this revision petition.

3. Heard the learned counsel for the petitioner as well as the respondent.

4. The only issue which has to be decided is whether the property claimed to be attached in the EP can be attached or not.

5. Order 38 Rule 5 CPC reads as under:-

''Attachment before judgment

5. Where defendant may be called upon to furnish security for production of property- (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

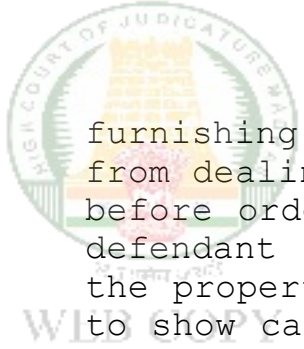
(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.''

6. Perusal of the said provision makes it clear that if the defendant in pursuant to such direction, furnished his suit property as security for the satisfaction of the decree, then such



furnishing of security by the defendant will bind and prevent him from dealing with the said property in any other manner. However, before ordering attachment, an opportunity should be given to the defendant under Rule 5(1) either to furnish security and produce the property at the disposal of the court as and when required or to show cause as to why he should not furnish security. Once the defendant furnishes the security as contemplated under sub rule (I), then there is no necessity for ordering attachment of the said property in view of the fact that the very furnishing of security and producing and placing the property at the disposal of the court would in effect is a self disciplined attachment by the defendant himself. When such security is offered and accepted by the court followed by recording of the same, then the defendant cannot be heard to say that he is not bound by such security or undertaking and he is at liberty to alienate the property in the absence of any attachment made by the Court. In effect, furnishing of such security is in lieu of attachment and not in the absence of attachment.

7. Admittedly, the petitioner has filed the above revision petition against the dismissal of I.A to withdraw the undertaking. The impugned order also shows that when proceedings for attachment before judgement were taken, the revision petitioner has filed CMA.No.292/15 before the High Court, wherein the revision petitioner had given an undertaking that he would not alienate the petition mentioned properties till the disposal of the suit and recording the said undertaking, CMA was disposed of. The Court below dismissed the present interlocutory application holding that since the undertaking has been given before the High Court, the Court does not have power to permit the petitioner to withdraw the undertaking and that the suit is for recovery of money and it is also ripe for trial and therefore, the petitioner can very well co-operate for early disposal of the suit instead of filing the applications by preventing the Court from taking up the main case for trial

There is no infirmity in the impugned order and therefore, interference of this Court is not necessary. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Ist Additional District Judge, Madurai.

order made in CRP(PD) (MD) No.1915 of 2017
19.12.2017