

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.1100 of 2018
and C.M.P.No.9176 of 2018

M.Rajarathinam ... Appellant / Respondent

verses

S.Robert Jegaraj ... Respondent / Petitioner

Prayer : The Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Civil Procedure Code, against the order passed by the learned III Additional District Judge, Coimbatore made in I.A.No.1396 of 2017 in O.S.No.508 of 2017 dated 21.02.2018.

For Appellant : Mr.T.R.Rajaraman for
Mr.M.Raja sekhar

For Respondent : Mr.I.Abrar T.Venkatesh Kumar

JUDGMENT

The appellant has filed this Civil Miscellaneous Appeal against the attachment ordered by the learned III Additional District Judge, coimbatore dated 21.02.2018.

2. The facts of the case are that the respondent being a plaintiff filed a suit in O.S.No.508 of 2017 before the learned District Judge, Coimbatore for recovery of money due under the Promissory Notes, dated 27.02.2014 and 10.11.2014.

3. The cause of action for the suit arose on 27.02.2014 and 10.11.2014, when the appellant/defendant herein executed a Promissory Note in favour of the respondent/plaintiff for Rs.4,00,000/- and for Rs.2,50,000/- respectively after receiving valid consideration therefor. On 20.05.2015, the appellant/defendant executed a letter in favour of the respondent/plaintiff acknowledging his liability to the amount due under the promissory notes. on all subsequent dates, when the appellant/defendant failed to make payment due under the said Promissory Notes and on 27.03.2017, the defendant issued a Cheque for Rs.8,00,000/- in favour of the plaintiff for

discharging the part of the legally enforceable debt payable to the plaintiff but the cheque was returned for lack of sufficient funds in the account of the appellant/defendant. On 28.03.2017, the respondent/plaintiff issued a Lawyer's Notice, calling upon the defendant to make payment due under the said dis-honoured Cheque. On all subsequent dates, the appellant/defendant was making hectic and clandestine attempts to alienate his only available property and leave the jurisdiction of this Court and thus, refusing to make payment due under the Promissory notes at Kurichi Village Coimbatore, where the said Promissory Notes are executed, within the jurisdiction of this Court. Hence the respondent/plaintiff prayed for recovery of money.

4. During the pendency of the suit, the respondent/plaintiff filed an Interlocutory application in I.A.No.1396 of 2017 in O.S.No.508 of 2017 before the trial Court to furnish security for the suit claim of Rs.15,00,000/-. Hence, the trial Court issued 6-A notice to the appellant/defendant to furnish security.

5. Pursuant to that the appellant/defendant produced the security bond with xerox copy of the partition Deed by way of complying the order. But the respondent/plaintiff filed a memo of objection due to non production of original partition Deed dated 07.02.2013. Further the security bond furnished by way of affidavit will not be reflected in the Encumbrance Certificate.

6. Per contra, the appellant/defendant filed a counter stating that the schedule mention property has already been mortgaged with Repco Bank for the loan amount of Rs.1,50,000/- on 20.03.2015. But he has not repay the loan due to his business loss.

7. After several hearings, on 21.02.2018, the trial Court has ordered for attachment by returning the counter filed by the appellant/defendant since the partition Deed which is in custody of the defendant would cause encumbrance.

8. Aggrieved against the attachment of property ordered by the trial Court, the appellant/defendant is before this Court.

9. The learned counsel for appellant would submit that he has given an undertaking that he would not alienate the property which was sought to be attached by the respondent herein. The learned counsel would further submit that the value of the attached property is 3 Crores which is 20 times more than the suit claim. But the trial Court has not considered the above facts, simply ordered for attachment which needs interference of this Court.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. On a perusal of records, it is seen that the appellant has filed an affidavit dated 07.02.2013 as security bond towards the property which was sought to be attached and also undertakes that he would not alienate the property. Therefore, in the interest of justice, this Court is inclined to pass the following order:

i) This Civil Miscellaneous Appeal is allowed by setting aside the order in I.A.No.1396 of 2017 in O.S.No.508 of 2017 on the file of the learned III Additional District Judge, Coimbatore.

ii) The learned III Additional District Judge, Coimbatore is directed to dispose of the suit made in O.S.No.508 of 2017 in accordance with law within a period of three months from the date of receipt of a copy of this order.

iii) Though the property mentioned in the petition seeking furnish security was already mortgaged with the Repco Bank, and hence it is between the appellant and the respondent who is the plaintiff in the suit may file any proof of property for the application for seeking furnish security for attachment can be considered afresh by the learned Judge if it is warrant.

Consequently, connected miscellaneous petition is closed.
No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vum

To

The III Additional District Judge,
Coimbatore.

+1 cc to M/s.I.Abrar Md Abdullah, Advocate, S.R.No.79616

+1 cc to Mr.M.Raja sekhar, Advocate, S.R.No.78948(24/03/2019)

C.M.A.No.1100 of 2018 and
C.M.P.No.9176 of 2018

CNR(CO)
SSM(18/03/2019) . (24/03/2019)