

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.3712 of 2012
and M.P.No.1 of 2012

P. Mahendran @ S.P. Mahendrarvarman ... Petitioner

Vs

M. Sundaraj ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and order passed by the learned Principal Sub Judge, Coimbatore, in I.A.No.101 of 2012 in O.S.No.229 of 2012 dated 16.03.2012.

For Petitioner : Mr.S. Saravanan

For Respondent : Mr.S. Ilamparithi

ORDER

The above Civil Revision Petition has been filed challenging the order passed by the learned Principal Sub Judge, Coimbatore

ordering attachment of the movable properties of the revision petitioner all of which are household articles.

2.The facts which are necessary for disposing of the Civil Revision Petition are as follows:

The petitioner herein had filed a suit O.S.No.229 of 2012 for recovery of a sum of Rs.2,67,000/- together with interest @1% per month for Rs.2,00,000/- on a Promissory Note dated 05.05.2009 said to have been executed by the revision petitioner in favour of the respondent herein.

3.The case of the respondent/plaintiff is that the revision petitioner had borrowed the said sum promising to repay the same on demand and despite demands have been made, the revision petitioner has not come forward to repay the said sum, on account of which, the respondent had issued a legal notice dated 07.06.2011 for which the revision petitioner had sent a reply notice containing false allegations. The respondent would

submit that the revision petitioner had borrowed the loan stating that he is Mahendran and only later the respondent came to know the name S.P.Mahendrarvarman. Along with the Plaint, the respondent had also filed I.A.No.101 of 2012 for a direction to the respondent to furnish security to the tune of Rs.2,67,000/-, failing which, order of attachment of the movable properties of the revision petitioner (which are all household articles) was ordered.

4.The only ground of which the application was filed was that the respondent reliably learnt that the revision petitioner was attempting to sell his movable properties to defeat and defraud the legitimate claim of the respondent. It appears that the learned Principal Sub Judge, Coimbatore by a one line order dated 16.03.2012, directed the revision petitioner to furnish security of the suit claim amount. There is no reason given in the order as to why the learned Judge deemed it fit to direct the respondent/revision petitioner to furnish security.

5. Thereafter, it is seen that the revision petitioner has filed his written statement as well as his counter wherein not only they have denied the execution of Promissory Note and the denial of borrowal but also he stated that he has no intention to alienate the property as contended.

6. The respondent had filed his counter in which he had contended that the attachment is sought for with reference to the household articles of his house and he has no intention of selling those articles which is being used by him everyday. He therefore sought for dismissal of the application.

7. Without reference to any of the contentions raised in the counter, the learned Principal Subordinate Judge has passed the impugned order which is the subject matter of the challenge in this revision.

8.Heard Mr.S. Saravanan, learned counsel appearing for the revision petitioner and Mr.S.Ilamparithi, learned counsel appearing for the respondent and perused the material on record.

9.The learned Principal Subordinate Judge, Coimbatore has not given any reason whatsoever either in the original order dated 16.03.2012, wherein he had directed the respondent to furnish security or in the present impugned order as to why the Court felt that he should call upon the revision petitioner to furnish security. This assumes significance on account of the fact that the revision petitioner has not only denied the execution of Promissory Note but he has also contended that the documents itself have been concocted one since his name is S.P.Mahendrarvarman, the Promissory Note issued in the name of Mahendravarman does not relate to the revision petitioner. That apart, the revision petitioner has also contended that he had no transaction with the respondent and all these facts have to be proved by the respondent before any claim can be made by the

revision petitioner/defendant. The learned Judge has not given any speaking order and has simply directed an order of attachment on the ground that security has not furnished. The order passed by the learned Principal Judge, Coimbatore, suffers from infirmity and it is liable to be dismissed.

10. Accordingly, this Civil Revision Petition is allowed. The order of attachment in I.A.No.101 of 2012 in O.S.No.229 of 2012 dated 16.03.2012 on the file of the learned Principal Sub Judge, Coimbatore, is set aside.

Considering the fact that the suit is of the year 2012, the learned Judge is directed to dispose of the same within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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30.10.2018

Index : Yes/No
Internet : Yes/No
mps

P.T. ASHA, J,

mps

To

The Principal Subordinate Judge,
Coimbatore.



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