IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.3756 OF 2016
AND CMP NO.19102 OF 2016

Velu @ T.Maruthamuthu ... Petitioner

Vs.

Gowrishankar ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.08.2016 in I.A.No.112 of 2016 in O.S.No.32 of 2016 on the file of the Second Additional District Judge, Erode.

For Petitioner : Mr.N.Chinnaraj
For Respondent : Mr.V.Anandha Moorthy

O R D E R

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This Civil Revision Petition is directed against the order passed under Order 38 Rule 5 read with Section 151 of the Code of Civil Procedure. The Trial Court has directed the petitioner / defendant to

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furnish security to the suit claim. Aggrieved over the order directing him to furnish security to the suit claim, the petitioner is before this Court.

2. According to the petitioner, he has not borrowed any amount from the respondent / plaintiff and therefore, he is not liable to furnish any security.

3. It is rightly found by the Trial Court that the said petition is not to decide the genuineness of the suit promissory note or to find out whether the same is supported by consideration. The apprehension as projected by an affidavit of a third party that the defendant is attempting to alienate his only immovable property, makes out a case in favour of the plaintiff to protect his interest.

4. The learned counsel for the petitioner / defendant would submit that he has already filed an affidavit of undertaking dated 02.06.2016, before the Trial Court, that he will not alienate or encumber the property, till the disposal of the suit.

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5. There is no reference to the affidavit of undertaking given by the petitioner / defendant in the order passed by the Trial Judge. Therefore, the petitioner / defendant is directed to file an affidavit of undertaking, before the Trial Court, afresh. If such an undertaking is filed, the Trial Court is directed to record the same and to dispose of the main suit itself, within a period of three months from the date of filing of the undertaking affidavit.

6. With these directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected civil miscellaneous petition is closed.

23.03.2018

Index : Yes/No

Internet : Yes/No

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M.GOVINDARAJ, J.

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To

The Second Additional District Judge
Erode.

C.R.P.(PD) NO.3756 OF 2016

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23.03.2018

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