



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD)No.1477 of 2016

and

C.M.P. (MD)No.12389 of 2016

E.Santha

... Appellant/Respondent/Defendant

Vs.

P.Prabakaran

... Respondent/Petitioner/Plaintiff

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(q) of C.P.C against the order of attachment passed in I.A.No.277 of 2016 in O.S. No.71 of 2016 dated 16.11.2016 on the file of the Principal District Judge, Karur.

For Appellant : Mr.H.Arumugam

For Respondent : No appearance

J U D G M E N T

The appellant is the defendant in O.S.No.71 of 2016 on the file of the Principal District Judge, Karur. The respondent filed the suit for recovery of money. Along with the suit, the respondent filed I.A.No.277 of 2016 under Order 38 Rule 5 and Sections 46 and 151 C.P.C seeking a direction to the appellant to furnish security to the suit amount within the time fixed by the court, failing which, to pass an order of attachment before judgment of the properties mentioned therein.

2. The learned Judge issued notice to the appellant to furnish security to the suit claim and the said notice was served on the appellant. The Court notice was ordered on 23.09.2016 and notice so ordered was affixed and by post, notice was served on the appellant. On 16.11.2016, the appellant entered appearance through Advocate. On that day, the appellant did not furnish any security and did not give any reason for not attaching the property. The learned Judge ordered attachment, as the appellant failed to furnish security.

3. Against the said order, the appellant has come out with the present appeal.



4. The learned counsel appearing for the appellant contended that the learned Judge failed to comply with the provisions of Order 38 Rule 5 C.P.C. The learned Judge, without applying his mind, has ordered attachment. No notice in Form-5 and 6 of C.P.C was served on the appellant. Without serving such notice, service of notice under Form 6 - 'A' on the appellant is not valid. The property is worth Rs.1 Crore and without giving any opportunity to the appellant, the attachment of entire property was ordered. The learned counsel appearing for the appellant also contended that the respondent is a stranger to her and she did not borrow any money and did not issue any cheque. The respondent is misusing the blank cheque issued to one Arockyasamy, as a security for the amounts borrowed by one Kudanthai Arasan, who is friend of the appellant's husband.

5. Heard the learned counsel appearing for the appellant.

Though notice was served on the respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

6. The contention of the learned counsel for the appellant is that the learned Judge has not followed the procedure contemplated under Order 38 Rule 5 C.P.C. The said contention is contrary to the records. From the records, it is seen that the learned Judge has issued notice to the appellant under 38 Rule 5 (1) C.P.C directing the appellant to furnish security within the time fixed therein. The said notice was affixed for the hearing on 23.09.2016. The appellant did not appear on that day. The learned Judge again issued court notice as well as private notice for the hearing on 16.11.2016. The notice sent by post was served on the appellant. The appellant entered appearance on 16.11.2016 through Advocate. On that day, the appellant did not furnish security or did not explain that he need not furnish any security or value of the property is more than Rs.1 Crore and the entire property should not be attached. On the failure of the appellant to comply with Order 38 Rule 6 C.P.C, the learned Judge ordered attachment. There is no error in the said order warranting interference by this Court.

7. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. C.M.P.(MD) No.12389 of 2016 is also dismissed.

Sd/-

Assistant Registrar(Cs-I)

/True Copy/

Sub Assistant Registrar(Cs-I)



To,

The Principal District Judge, Karur.

+1cc to Mr.H.Arumugam, Advocate Sr.No.80808

CM

VB/SKN/SAR1/12.10.2018/2P/3C

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