



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P.(PD)(MD)No.60 of 2018

and

C.M.P(MD)No.247 of 2018

Alamelu :Petitioner / Petitioner / Plaintiff

vs.

1.G.Muthukrishnan

2.Indira :Respondents /Respondents / Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order in I.A.No.218 of 2016 in O.S.No.106 of 2016 passed by IV Additional District Court, Tirunelveli, dated 27.04.2017.

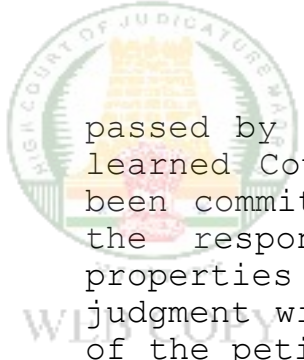
For Petitioner : Mr.K.P.Narayanakumar

ORDER

This Civil Revision Petition is filed to call for the records pertaining to the fair and decreetal order in I.A.No.218 of 2016 in O.S.No.106 of 2016 passed by IV Additional District Court, Tirunelveli, dated 27.04.2017.

2.The petitioner has filed a suit in O.S.No.106 of 2016 on the file of the IV Additional District Court, Tirunelveli, for recovering a sum of Rs.23,31,000/- from the respondents with interest at 12% on the principal. Along with the plaint, the petitioner has filed an application in I.A.No.218 of 2016 for attachment before judgment. The petitioner sought attachment of the property namely, a house building. The lower Court dismissed the petition as this petitioner has not given any reason to satisfy the ingredients of Order XXXVIII Rule 5 of CPC, even in the affidavit filed in support of the petition.

3.Going by the affidavit that was filed by the petitioner, there is no whisper that defendants are making an attempt to alienate or trying to dispose of the properties with intent to obstruct or delay the execution. Nothing is stated in the affidavit to justify an order of attachment before judgment. In such circumstances, this Court does not find any infirmity in the order



passed by the lower Court in dismissing the petition. However, the learned Counsel for the petitioner submitted that the mistake has been committed by his counter part and that there is an urgency as the respondents are trying to dispose of the aforementioned properties and that therefore the order of attachment before judgment will be in the interest of justice to protect the interest of the petitioner who is entitled to recover a huge sum of more than Rs.25 lakhs as on date from the defendant. Merely because the suit claim is high an order of attachment is not automatic and the petitioner is bound to satisfy the Court in terms of order XXXVIII Rule 5 of C.P.C.

4.Hence, this Court is not able to interfere with the order passed by the lower Court and this petition deserves dismissal. As a result, this petition is dismissed and the order passed in I.A.No.218 of 2016 in O.S.No.106 of 2016 passed by the IV Additional District Court, Tirunelveli, dated 27.04.2017 is confirmed. However, liberty is given to the petitioner to file a fresh application under Order XXXVIII Rule 5 CPC, if it is required to protect his interest provided he satisfies the requirements of Order XXXVIII Rule 5 of CPC. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The IV Additional District Court, Tirunelveli.

+1cc to Mr.K.P.Narayanakumar, Advocate in SR. No.41974

cmr

MK/SKN RSK/SAR-2/15.02.2018/2P/3C

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