



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.696 of 2018

M.A.M.Farook

: Petitioner

-Vs-

P.Imansingh

: Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the impugned I.A.No. Nil of 2017 in O.S.No.53 of 2017, on the file of the learned Principal Subordinate Judge, Kanyakumari District at Nagercoil.

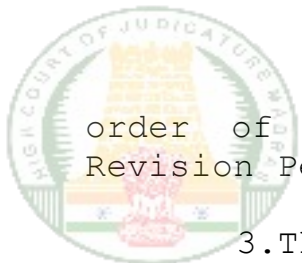
For Petitioner : Mr.P.Muthuvijayapandian

For Respondent : No Appearance

O R D E R

The Civil Revision Petition has been filed against the order dated 06.11.2017 in I.A.No.Nil of 2017 in A.S.No.53 of 2017, on the file of the learned Principal Subordinate Judge, Kanyakumari District at Nagercoil.

2.The revision petitioner, who is the defendant, has filed an unnumbered Interlocutory Application in I.A.No. Nil of 2017 and the same has been returned by the learned Judge stating that the matter has already been compromised between the plaintiff and the defendant and the suit was dismissed as settled out of Court on 11.10.2017. When the suit was filed for recovery of amount of Rs.37,000/-, the respondent/plaintiff has filed an application for attachment of the property for furnishing the security. Since the petitioner has failed to furnish the property, the same was communicated to the Registrar Office. Now, since the suit was dismissed as settled out of Court on 11.10.2017, the petitioner has filed the present application under Order 38 Rule 9 CPC seeking to remove the attachment made already in O.S.No.53 of 2017 and the said application was returned by the learned Judge on 06.11.2017 stating that how this petition is maintainable when the suit was dismissed on 11.10.2017 itself. Challenging the said



order of return, the petitioner has filed the present Civil Revision Petition.

3.The learned counsel appearing for the petitioner submitted that the learned Judge has returned the application filed by the revision petitioner and the same has been re-presented on 13.11.2017 by stating that the said application filed under Order 38 Rule 9 C.P.C., is maintainable, even after dismissal of the suit. But, however, without considering the same, the learned Judge has again returned the papers by making the very same reasons.

4.I have considered the submissions made by Mr.Muthuvijayapandian, learned counsel appearing for the petitioner and there was no representation for the respondent and perused the materials available on record.

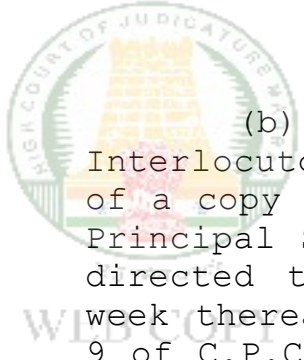
5.It is an admitted fact that the suit was dismissed as settled out of Court on 11.10.2017. At the time of hearing the suit, the attachment order was passed by the learned Subordinate Judge, Nagercoil. If the suit was dismissed as settled out of Court, the Court is ought to have removed the attachment order as per under Order 38 Rule 9 CPC. Order 38 Rule 9 CPC reads as follows:

"9. Removal of attachment when security furnished or suit dismissed:- Where an order is made for attachment before Judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed."

6.As per the said provision, it is made clear that at the stage of hearing the suit, when the petitioner furnishes the security required or the suit is dismissed, the Court should remove or withdrawn the attachment. The learned Judge, without going into the said provision which clearly empowered Court concern who passed the attachment to remove or withdrawn the attachment as per under Order 38 Rule 9 CPC, but the learned Judge simply returned the application by stating that how this petition is maintainable. When the suit itself was dismissed for default on 11.10.2017 itself, the Court ought to have pass order for removal of attachment. Therefore, this Court is inclined to allow this Civil Revision Petition.

7.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order dated 06.11.2017 made in un-numbered I.A.No. Nil of 2017, on the file of the learned Principal Subordinate Judge, Kanyakumari District at Nagercoil;



(b) the petitioner is directed to re-present the said Interlocutory Application, within a week from the date of receipt of a copy of this order and on receipt of the bundle, the learned Principal Subordinate Judge, Kanyakumari District at Nagercoil, is directed to number the said Interlocutory Application, within a week thereafter and to pass appropriate order under Order 38 Rule 9 of C.P.C. without issuing any notice to the respondent within a period of two weeks. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Kanyakumari District at Nagercoil.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai-23. (2 copies)
(to return the original papers)

+ 1 cc TO Mr.P.Muthuvijayapandian , Advocate in SR No.63858

vsv/trp
AE/KKR/SAR3/05.06.2018/3P/5C

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