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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.08.2018

DELIVERED ON : 17.09.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 1712 of 2015

and

M.P. (MD) No. 1 of 2015

Raja Simhan

.. Petitioner/Respondent/Defendant

Vs.

Senthilprasad

.. Respondent/Petitioner/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 06.03.2015 made in I.A.No.710 of 2014 in O.S.No.367 of 2014 on the file of the learned Principal Sub Judge, Karur.

For Petitioner : Mr.N.Shanmugaselvam
For Respondent : Mr.V.Sitharanjan Das

ORDER

Heard Mr.N.Shanmugaselvam, learned counsel appearing for the petitioner and Mr.V.Sitharanjan Das, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the fair and decreetal order dated 06.03.2015 made in I.A.No.710 of 2014 in O.S.No.367 of 2014 on the file of the learned Principal Sub Judge, Karur.

3.The petitioner is the defendant in the suit. The respondent herein has filed a suit against the petitioner for recovery of amount on the basis of a promissory note and the respondent filed a petition in I.A.No.710 of 2014 for attachment of the petitioner's property and the petition was allowed by the lower Court. Against the order, the petitioner has filed the present petition.

4.On the side of the petitioner, it is stated that the estimate for the value of the property was not attached with the petition and the petitioner has not complied with the mandatory provision under Order 38 Rule 5(2) and the property is worth more than one crore and prayed to allow this petition.



5. On the side of the respondent, it is stated that on 15.01.2012, the petitioner herein has borrowed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) from the respondent and executed a demand promissory note to repay the amount with interest at the rate of Rs.1.50 per 100 per month and the petitioner herein failed to pay the amount with interest inspite of repeated requests and demands. The petitioner herein tried to dispose of the petition mentioned property and the petitioner failed to produce any security before the trial Court and that the trial Court has rightly ordered for the attachment of the petition mentioned property.

6. On the side of the petitioner, it is stated that the property is situated outside the jurisdiction of the trial Court and the trial Court failed to consider the value of the property and there is no prima facie case made out for attachment before the Judgment and the lower Court has passed an order simply relying upon the third party affidavit for allowing the petitioner to furnish security without specifying the time to furnish security. It is further stated that the procedures under Section 136 of C.P.C., is not followed by the trial Court and the trial Court has failed to send attachment order to the concerned jurisdictional District Court for execution. It is further stated that the order is a non speaking order passed only on the basis of a third party affidavit.

7. On the side of the respondent, it is stated that the petitioner has not come forward to furnish any security for the suit amount. The only source available to the petitioner to secure the suit amount will be attachment of the petition mentioned property and prayed to dismiss the petition.

8. Records perused. A perusal of the records reveals that the petitioner has not pleaded the point of jurisdiction at the time of counter in I.A.No.710 of 2014. The order passed by the trial Court is only a Speaking order. The petitioner has not stated that he is ready to furnish any security for the amount. It is clearly stated that petitioner has not come forward to furnish security. Whether the petitioner has borrowed the amount or not cannot be decided in the present petition and it will be decided only after the completion of the trial. The order of attaching the property is correct and hence, there is nothing to interfere in the lower Court order. This Civil Revision Petition is dismissed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (RTI)

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To

1.The Principal Sub Judge, Karur.

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+1 CC To MR.V.SITHARANJANDAS, Advocate SR. NO.84468

+1 CC To MR.N.SHANMUGA SELVAM, Advocate SR. NO. 85022

C.R.P. (PD) (MD) No.1712 of 2015

17.09.2018

MRN

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