



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) .No.1160 of 2018

and

C.M.P. (MD) No.4964 of 2018

G.Vivek

... Petitioner/Plaintiff

Vs.

K.N.Velavendhan

... Respondent/Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.04.2018 made in I.A.No.402 of 2017 in O.S.No.104 of 2017 on the file of the V Additional District Court, Madurai, by allowing the Civil Revision Petition.

For petitioner

: Mr.A.Arumugam

For Respondent

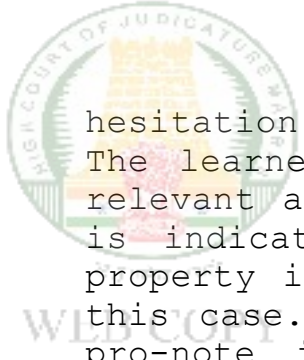
: No appearance

O R D E R

The plaintiff in O.S.No.140 of 2017 on the file of the V Additional District Judge, Madurai, is the revision petitioner herein. It is a suit for recovery of a sum of Rs.14,24,670/- (Rupees Fourteen lakhs twenty four thousand six hundred and seventy only) with interest. The said suit has been laid on the strength of a pro-note dated 15.09.2015 executed by the respondent herein. This Court went through the contents of the written statement. It is seen that the signature found on the suit pro-note is admitted, but ofcourse, the execution of the document is denied. The revision petitioner filed I.A.No.402 of 2017, for attaching the petition mentioned property before judgment. The said I.A. was opposed by the defendant by filing a counter affidavit. The lower Court dismissed the I.A. by the impugned order dated 07.04.2018. The same is assailed in this Civil Revision Petition.

2. Though the respondent has been served with notice and he has entered appearance through counsel, no one is present before this Court. In fact, the matter was taken up on 06.08.2018 and on that day also there was no appearance on the side of the respondent herein.

3. The counsel for the revision petitioner would contend that when there is a real possibility of the defendant in alienating the property in question, there should not be any



hesitation to make attachment of the property before the judgment. The learned counsel for the revision petitioner pointed out the relevant averments in paragraph -7 of the counter affidavit. It is indicated therein that there is a prospect of selling the property in question. Thus, there are two features obtaining in this case. Firstly, the signature of the defendant in the suit pro-note is admitted. Secondly, the defendant has virtually proclaimed his intention to sell property in question. In such situations, even if the petitioner is able to obtain money decree, it would only be on paper. He will not be able to realise the fruits thereof. Interest of justice, therefore require that the plaintiff is given protection. This Court is satisfied that the ingredients set out in Order 38 Rule 5 of C.P.C., are fully satisfied in this case. The respondent has also not furnished any security. This Court is satisfied that the defendant is having an intent to obstruct and delay the execution of the decree passed in the property in question. Therefore, the order of the V Additional District Judge, Madurai is set aside.

4. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To:

The V Additional District Judge,
Madurai.

+1cc to Mr.A.Arumugam, Advocate Sr.No.77952

pnn

VB/RP/SAR3/07.09.2018/2P/3C

**ORDER MADE IN
C.R.P. (PD) (MD) .No.1160 of 2018
and
C.M.P. (MD) No.4964 of 2018
07.08.2018**