BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.06.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)(MD) No.1233 of 2018
and C.M.P.(MD) No.5233 of 2018

S.Chandran ... Revision Petitioner/Petitioner/Plaintiff

-vs-

A.Kannan ...Respondent/Respondent/Defendant

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 04.06.2018 in I.A.No.54 of 2017 in O.S.No.41 of 2017 on the file of the learned Principal District Judge, Theni and thus allow the revision petition with costs throughout.

For Petitioner : Mr.M.A.M.Raja

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O R D E R

The petitioner is the plaintiff in the suit in O.S.No.41 of 2017 on the file of the learned Principal District Judge, Theni, in which, he filed the suit for recovery of money of Rs.12,98,000/- and Rs.11,00,000/- along with various other reliefs. During pendency of the suit, the petitioner/plaintiff had filed an application in I.A.No.54 of 2017 in O.S.No.41 of 2017 for a direction to the defendant to furnish adequate security for the suit claim amount, in default, to pass an order of attachment before Judgment of the petition mentioned properties till the disposal of the suit and the said application was dismissed on the ground that the petition mentioned property was already mortgaged to Theni Branch Karur Vysya Bank. Aggrieved by the same, the petitioner is before this Court.

2. It is the case of the revision petitioner / plaintiff that as against the borrowal of Rs.11,00,000/- as hand loan on 21.09.2016 from him, the defendant had executed a promissory note on the same day and when the plaintiff demanded repayment of the amount, the defendant did not come forward to pay either the principal amount nor the interest, which made him to cast a legal notice to the defendant. It is the further case of the revision petitioner that though the defendant had accepted the factum of receipt of the amount in the reply notice, in the meanwhile, he also attempted to alienate his assets so as to escape from repayment of the amount.

Contending that unless the petition mentioned property owned by the respondent is attached for the purpose of executing the decree to be passed, he cannot realize his amount forever. However, the Trial Court, without considering all these aspects, had simply disallowed the application filed by the plaintiff, which needs interference by this Court.

3. Heard the learned counsel for the petitioner and the notice to other side is dispensed with, in view of the nature of disposal of this case and perused the material documents available on record.

4. The stand of the plaintiff is that even after filing the suit, the defendant has not come forward to settle the amount and in order to prevent him from escaping from repayment of the amount by way of selling all his assets, the plaintiff had filed the application before the Court below, seeking for an order of attachment. It is seen from the written statement filed by the defendant in the suit that though he had not denied the factum of receipt of loan from the plaintiff, the contradiction in the plea of the plaintiff regarding issuance of promissory notes was highlighted by the defendant. It is not disputed that the petition mentioned property was purchased by the defendant through proper sale deed, at the same time, it could be noted that the said property was mortgaged in favour of the Karur Vysya Bank, Theni Branch as security for the loan obtained by the defendant and in the event of the said property being ordered to be attached in respect of the hand loan borrowed by the defendant from the plaintiff, the ultimate sufferer would indeed be the Bank and the Bank will not be in a position to collect their money. It would have been different in case the plaintiff sought for attachment of some other property of the defendant, having no encumbrances. Even though the apprehension of the plaintiff, regarding alienation of assets by the defendant, cannot be brushed aside, it should be remembered that to save one eye, the other one cannot be lost. In other words, if this petition is allowed, there is no perdition for the defendant, as his property in question has already been in attachment and its place will only get changed, but, however, it will definitely cause irreparable loss to the Bank. If the property was attached after execution of promissory notes in favour of the petitioner, this Court would have come to the aid of the plaintiff to some extent, whereas, as per the finding of the Trial Court, the property was attached even before execution of promissory notes.

5. Considering the overall circumstances, I do not find sufficient grounds / merits in this petition, so as to interfere with the order of the Trial Court and this Court at this stage shall only issue a direction to the Trial Court for early disposal of the suit in a short span of time.

6. In the result,

a) this Civil Revision Petition is dismissed, confirming the order dated 04.06.2018 made in I.A.No.54 of 2017 in O.S.No.41 of 2017 by the learned Principal District Judge, Theni;

b) the learned Principal District Judge, Theni is directed to dispose of the suit in O.S.No.41 of 2017 within a period of two months from the date of receipt of copy of this order, by conducting trial on day-to-day basis without giving any adjournments to either parties and the parties are also directed to give their fullest cooperation for early disposal of the suit within the specified time as indicated above.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Theni.

+ 1 CC TO Mr.M.A.M.RAJA, ADVOCATE IN SR No.70096

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RJ/SV/SAR-2 : 11/07/2018 : 3P/3C

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