



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.1755 of 2016

M/s.Tool Fab Engineering Industries (P) Ltd.,
Rep. by its Managing Director,
C.Madanmohan,
Having its Registered Office at
No.E.3-10, D.P.Estate,
Thuvakudi, Trichy-620 015.

... Petitioner/Third party/
Third party

Vs.

1. Bharat Heavy Electricals Ltd.,
A Company registered under the
Companies Act, Trichy - 14,
Rep. by its General Manager,
Outsourcing Department.

... 1st Respondent/Petitioner/
Plaintiff

2. M/s.Nagi Enterprises (Unit I & II),
Rep. by its Managing Partner,
N.Paneer Selvam,
Having Registered Office & Works at
No.83, S.I.D.C.O. Developed Plots Estates,
Thuvakudi, Trichy - 15 and
also having works at
No.17/12B, Palangangudi,
Asoor Main Road, Trichy - 15.

3. N.Paneer Selvam

4. P.Pushpalatha

... Respondents 2 to 4/

Respondents 1 to 3/

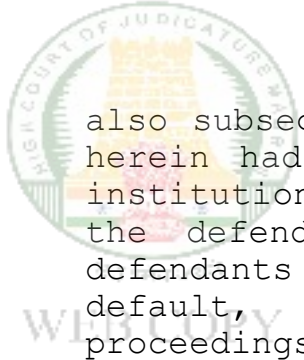
Defendants 1 to 3

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the petition order dated 12.12.2014 passed in I.A.No.187 of 2014 in O.S.No.38 of 2014 on the file of the learned II Additional District Judge, Trichy and allow the present Civil Revision petition.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.Raguvaran Gopalan,
for Mr.K.PrabakarO R D E R

The first respondent herein filed O.S.No.38 of 2014 before the learned II Additional District Judge, Trichy, for recovering certain sum of money from respondents 2 and 3 herein. In the said suit, the property in question was attached before Judgment. The suit was



also subsequently decreed. It appears that the Revision petitioner herein had already purchased the suit property long prior to the institution of the suit. The property was originally mortgaged by the defendants in the suit in favour of a Bank. Since the defendants in the suit were borrowers of the Bank and committed default, the property was the subject matter of SARFAESI proceedings. Auction was conducted. The Revision petitioner had purchased the property in the Auction sale. Therefore, the Revision petitioner contends before this Court that the order of attachment before Judgment has to be set aside.

2. This Court is of the view that Order 38 Rule 8 r/w 11(A) of C.P.C., provides an effective remedy to the Revision petitioner. Rule 10 of Order 38 of C.P.C., states that such attachment before Judgment would not affect the rights existing prior to the attachment of persons who are not parties to the suit. A mere look at Rules 8, 10 and 11(A) of Order 38 of C.P.C., would indicate that the Revision petitioner's rights would not in any way be affected by the attachment. Therefore, what the Revision petitioner needs to do is to file an Interlocutory application before the Court below for adjudicating his claim.

3. The learned counsel appearing for the Revision petitioner submits that he would file such an application within two weeks from the date of receipt of a copy of this order. If such an application is filed, the same shall be disposed of by the Court below within a period of four weeks, thereafter.

4. The Civil Revision petition stands disposed of, accordingly. No costs.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The II Additional District Judge,
Trichy.

COPY TO

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. 2COPIES

- 1 CC TO Mr.R.SUBRAMANIAN , ADVOCATE IN SR No. 87475.
- PMU
- DS RP SAR4 04 12 2018 2P 5C

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