



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.2329 of 2016

and

C.M.P (MD) .No.10750 of 2016

T.Usha Rani

... Petitioner/Respondent/Defendant

-vs-

T.K.Selvan

... Respondent/Petitioner/Plaintiff

PRAYER: Petition filed under Article 227 of Constitution of India, to set aside the order in I.A.No.112 of 2016 in O.S.No.49 of 2016 on the file of the Sub Court, Kuzhithurai, dated 21.06.2016.

For Petitioner : Mr.J.Jeyakumaran

For Respondent : Mr.K.Sreekumaran Nair

ORDER

The revision petitioner is the defendant in the suit in O.S.No.49 of 2016 on the file of the Sub Court, Kuzhithurai and in the suit, the plaintiff sought for recovery of money, etc. During pendency of the suit, the plaintiff/respondent had filed an application I.A.No.112 of 2016 for furnishing security to the tune of Rs.3,00,000/- in respect of petition mentioned property.

2. The facts of the case as alleged by the plaintiff in the plaint is that the plaintiff is his sister and she borrowed a sum of Rs.2,00,000/- from him on 01.04.2015 for her urgent needs. For the security purpose, she had issued a post dated cheque for Rs.2,00,000/- payable on 12.10.2015 and when the cheque was presented for collection, it got bounced with an endorsement "insufficient funds". Therefore, the plaintiff issued a legal notice and despite receipt of the same, she did not take steps to settle the amount. It was further alleged that the defendant, instead of settling the score, had attempted to alienate the property to defraud the plaintiff and therefore, the plaintiff filed an application for attachment of the property, which was allowed by the Trial Court.



3. It is the further case of the revision petitioner that the Trial Court has passed the order of attachment without notice to her and thereby, there was a violation of principles of natural justice. Moreover, the order passed in the application is a non speaking order and non consideration of material facts would cause grave prejudice to the petitioner and therefore, the order of the Trial Court is liable to be set aside.

4. Per contra, learned counsel for the respondent would submit that the revision petitioner, without exhausting the appeal remedy, has straightaway approached this court by invoking Article 227 of the Constitution of India and therefore, the petitioner is not maintainable before this Court.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. A fair reading of the impugned order would disclose that the plaintiff has invoked Order 38 Rule 5 CPC seeking for an order of attachment, in which the learned Subordinate Judge, Kuzhithurai passed the order. It was brought to the notice of this Court that as against the order of the Trial Court, there is an appeal remedy available to the revision petitioner and invoking the jurisdiction of this Court is impermissible.

7. Considering the facts and circumstances of the case and also taking into account the fact that the order was passed under Order 38 Rule 5 CPC, this Court is of the view that this petition is liable to be dismissed with liberty to the petitioner to approach the appropriate forum by way of appeal.

8. In the result,

a) this Civil Revision Petition is dismissed, granting liberty to the petitioner to file an appeal against the order dated 21.06.2016 passed by the learned Subordinate Judge, Kuzhithurai in I.A.No.112 of 2016 in O.S.No.49 of 2016, before the concerned Appellate Forum within a period of two weeks from the date of receipt of this order;

b) on filing the appeal the trial Court is directed to number the appeal without insisting the delay.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/



To:

The Subordinate Judge,
Kuzhithurai,
Kanniyakumari District.

+ 1 CC TO Mr.K.SHREEKUMARAN NAIR, ADVOCATE IN SR No. 74473
+ 1 CC TO Mr.J.JEYAKUMARAN, ADVOCATE IN SR No. 74938

TM

TE/RP/SAR-3 : 23/08/2018 : 3P/4C

C.R.P. (PD) (MD) No.2329 of 2016
23.07.2018