



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CMA (MD) .No. 734 of 2018 and
CMP (MD) .No.8297 of 2018

Sri. Vinayaka Hardwares and Electricals
through its Administrative Partner,
S. Chandrasekar : Appellant

Vs.

K. Pandi @ Karuppasamy : respondent

Prayer: This Civil Miscellaneous Appeals is filed under 43 Rule 1(q) of CPC against the fair and decreetal order dated 18.09.2017 passed in I.A.No.41 of 2017 in O.S.No.32 of 2017 on the file of the Principal District Judge, Theni.

For Appellant : Mr. M. Chelladurai

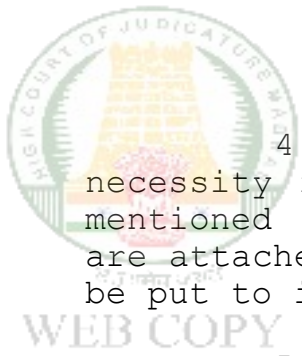
For respondent : Mr. B. Jeyakumar in SR stage

JUDGMENT

This Civil Miscellaneous Appeal is filed against the fair and decreetal order, dated 18.09.2017, passed in I.A.No.41 of 2017 in O.S.No.32 of 2017 on the file of the Principal District Judge, Theni.

2. The appellant is the defendant in O.S.No.32 of 2017, on the file of the learned Principal District Judge, Theni. The respondent, who is the plaintiff, filed the said suit for recovery of money. Along with the suit, the respondent filed I.A.No.41 of 2017, under Order 38 Rule 5 CPC to issue notice directing the appellant to furnish security, failing which, to pass an order of attachment.

3. According to the respondent, the appellant is taking steps to dispose the suit property mentioned in the petition therein to third parties, in order to defeat the interest of the respondent in the suit.



4. The appellant filed counter contended that there is no necessity for the appellant to sell the properties. The petition mentioned properties worth Rs.50,00,000/- and if the properties are attached for the claim of Rs.12,00,000/-, the appellant would be put to irreparable loss and hardship.

5. The learned Principal District Judge, Theni, ordered attachment before Judgment in I.A.No.41 of 2017 in O.S.No.32 of 2017, dated 18.09.2017.

6. Against the said order, the appellant has filed the present appeal.

7. The learned counsel appearing for the appellant contended that the learned Principal District Judge did not direct the appellant to furnish the security and no date was fixed for furnishing the security. He further contended that the respondent has not furnished any details about his contention that the appellant is taking steps to sell the properties to third parties.

8. The learned counsel appearing for the respondent contended that the learned Judge has followed the procedure and only when the appellant failed to furnish the security as ordered by the learned Judge, has rightly been ordered attachment before Judgment.

9. I have heard the learned counsel appearing on either side and perused the materials available on record.

10. From the order of the learned Judge, it is not clear as to when the learned Judge ordered notice to the appellant to furnish the security to the suit claim within the time fixed therein. From the affidavit filed by the respondent, in respect of the affidavit attachment before Judgment, except making Bald statement that the appellant is taking steps to sell the property to the third parties to defeat his interest, no particulars were furnished or no third party affidavit was filed. In the counter affidavit filed by the appellant has stated that there is no necessity for him to sell the property. But, has not given undertaking that he will not sell the property pending suit.

11. Considering the above facts, the order dated 18.09.2017, passed in I.A.No.41 of 2017 in O.S.No.32 of 2017, on the file of the Principal District Judge, Theni, ordering attachment before Judgment, is set aside and this Civil Miscellaneous Appeal is allowed.

12. The appellant is directed to file an affidavit of undertaking before the Trial Court that he will not alienate the suit property pending suit, within a period of two weeks from the date of receipt of a copy of this Judgment. Further, the learned



Judge is directed to dispose of the suit as expeditiously as possible, in any event not later than six months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The Principal District Judge, Theni.

+1 CC To MR.V.SANTHA KUMARESAN, Advocate SR. NO. 83154

+1 CC To MR.B.JEYAKUMAR, Advocate SR. NO. 83188

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TRP

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