

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1747 OF 2019

AND

C.M.P.NO.5540 OF 2019

1.V.Anandan

2.V.Sampath

... Appellants/Defendant

Vs.

1.P.Velmurugan

2.B.Mohan

... Respondents/Plaintiffs

PRAYER:

Civil Miscellaneous Appeal file under Order 43 Rule 1 of C.P.C. praying to set aside the petition and order dated 06.02.2019, passed in I.A.No.58 of 2018 in O.S.No.30 of 2018, on the file of the 1st Additional District and Sessions Judge, Vellore.

For petitioners : Mr.T.Mathi

For respondents 1 & 2 : M/s.NA.Thara

J U D G M E N T

The respondents herein filed a petition for furnishing security for suit amount failing which for order attachment of property, before the First Additional District and Sessions Judge, Vellore. The trial Court on 06.02.2019, directed the appellants to furnish security to the tune of Rs.62,97,500/- on or before 06.02.2019. However, on 06.02.2019, the appellants filed petition seeking extension of time for furnishing security. The trial Court rejected the petition and ordered attachment of the property by 28.03.2019. On compliance with the procedures, the attachment order passed by Trial Court dated 23.01.2019 was effected and necessary entries were made in the registers.

2. Aggrieved over the order of attachment, the appellants filed the appeal on the ground that they are willing to furnish security and that they wanted extension of time to do the same. The Trial Court without considering the request, has arbitrarily passed the order of attachment. Hence, the appellants have furnished the very same property as security before the Court and seeks to set aside the order of attachment. Whether the property furnished as security is acceptable or not has to be seen by the Trial Court under notice to the respondents. If it is acceptable, the order of attachment will be raised by the Trial Court. Therefore, it is the discretion of the Trial Court to consider the matter on merits.

3. Under such circumstances, this Court is inclined to remand the matter back to the Trial Court to consider the modification of the order in the change of circumstances under Order 39 Rule 4 of C.P.C. Accordingly a direction is issued to the Trial Court to consider the order passed by it on 28.01.2019 and pass appropriate orders on merits within a period of one month from the date of receipt of a copy of this order. With the above observations, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

bkn/tk

To

The First Additional District and Session Judge,
Vellore.

+1cc to M/s.NA.Thara, Advocate, S.R.No.27824

+2cc to M/s.T.Mathi, Advocate, S.R.No.26668 (14.08.2019)

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AND
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NMI (CO)
CS/05/07/2019