

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 25.09.2019**

**CORAM:**

**THE HON'BLE Mr. JUSTICE R.PONGIAPPAN**

**Civil Revision Petition (PD) No.4926 of 2014**  
**and**  
**M.P.No.1 of 2014**

1. M/s. Lakshmi Snow Sparkle Product P Ltd  
Rep by its Managing Director  
K.Mani
2. K.Mani  
Managing Director of M/s. Lakshmi Snow Sparkle Product P Ltd  
Kangeyam Road  
Muthur
3. M.Saravanan  
Director of M/s. Lakshmi Snow Sparkle Product P Ltd  
No.33, Kangeyam Road  
Muthur

Petitioners

Vs

M/s.Revathi Rice Mill  
a Registered Partnership Firm  
Rep by its partner  
A.Krishnamurthy  
S.F.No.1146, Vakkanangattu Thottam  
Kandiyan Kovil Village,  
Pollikalipalayam Via  
Tiruppur Taluk

Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.02.2014 passed in I.A.No.981 of 2013 in O.S.No.403 of 2013, on the file of Subordinate Court, Tiruppur.

For Petitioners : Ms.S.Rajeni Ramadass

For Respondent : Mr.K.Sivasubramanian for  
Mr.T.M.Hariharan

## **ORDER**

The defendants 1 to 3 in OS No.403 of 2013 on the file of Subordinate Court, Tiruppur are the petitioners herein. Before the trial Court, the respondent in this Civil Revision Petition has filed a suit as against the petitioners and seeks the relief of direction to direct the petitioners/defendants to repay a sum of Rs.4,18,809.00/- with interest at the rate of 12% per annum on Rs.2,73,650/- from the date of suit till the date of realization.

2. Along with the plaint, the respondent has filed an application under Order 38 Rule 5 of Civil Procedure Code, in which, he prayed the learned Subordinate Judge, Tiruppur to attach the property owned by the petitioner before the Judgment. Through an order dated 04.02.2013 in I.A.No. 981 of 2013, the learned Subordinate Judge, had directed to attach the petition mentioned properties.

3. Aggrieved over the said findings dated 04.02.2013, the petitioners are before this Court with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioners/defendants would contend that the provision under Order 38 Rule 5 contemplates that before passing an order of attachment, it is the duty vested with the Court to direct the respondent for furnishing the security. But, in this case, the said procedure has not been followed by the learned Subordinate Judge, Tiruppur. Secondly, the learned counsel would contend that the property attached through the impugned order is not belonging to the petitioners. In fact, the attached property belongs to the Hindu Joint Family property of the 2nd petitioner. So in any way, the order passed by the Court below is violative of principle laid down under Order 38 Rule 5 of Civil Procedure code and also against the principles of natural justice.

5. In this regard, the learned counsel appearing for the respondent would contend that without seeing the original records, which are maintained before the trial Court, it cannot be said that the Court below failed to direct the respondent to furnish the security. Further, in respect to the ownership of the property, he conceded that the property already attached is the joint family property of the second respondent.

6. Submissions made by either side counsel are recorded.

7. On close reading of the impugned order passed by the learned Subordinate Judge, Tiruppur, it is to be noted that there was no averment in respect to sending of notice to the respondent and for furnishing the security to the suit amount. In this regard, it is relevant to see the judgment of Andhra Pradesh High Court, (Nidhi Clearing & Forwarding Company and another Vs. Associated Cement Companies Ltd, reported in 1996 A1 HC 5275, in which it has held in para 11 as follows.

*11. Thus it is clear that the procedure laid down under Order 38 Rule 5(i) of the Code of Civil Procedure is mandatory. Before issuing attachment notice it is incumbent on the Court to issue notice in Form No.5 (Appendix-F). In the case on hand such a course is not taken. A general notice was issued to the defendant. When this course is not followed, the consequent attachment is illegal.*

8. Hence, on that score alone, the impugned order passed by the learned Subordinate Judge, Tiruppur is having material irregularity. In otherwise, in respect to the second aspect put forth by the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent fairly conceded that the property attached by the Court below is not the absolute property of the petitioners. In this regard, the extract

of A Register dated 14.06.2014, stands in the name of one Karupanna Mudhaliar is enclosed by the counsel appearing for the petitioner as Sl.No.5, in his type set. The said extract reveals the fact that the attached property is in the name of Karupanna Mudhaliar. In fact, the said Karupanna Mudhaliar is not a party in the attachment proceedings initiated by the respondent. Further, passing orders for attachment of others property, without verifying the details of ownership of the property concerned is not at all fair.

9. In view of the above discussions, the impugned order passed by the learned Subordinate Judge, Tiruppur is hereby set aside. The Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

vrn

**25.09.2019**

**To**

The Subordinate Court, Tiruppur.

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**R.PONGIAPPAN, J.,**

vrn



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