

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3369 of 2019

1. B.N. Krishnamoorthy

2. Jothi

... Petitioners

-Vs-

D. Ravichandran

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the docket order made in I.A. No. 2 of 2019 in O.S. No. 1008 of 2019 on the file of the Sub-Judge, Coimbatore, dated 27.08.2019.

For Petitioners : Mr. M. Muruganantham

For Respondent : Mr. P. Muthusamy

ORDER

This Civil Revision Petition has been filed against the docket order made in I.A. No. 2 of 2019 in O.S. No. 1008 of 2019 on the file of the Sub-Judge, Coimbatore, by order dated 27.08.2019.

2. Before the trial Court, the respondent had filed a suit in O.S. No. 1008 of 2019 for recovery of money, along with the suit I.A. No. 2 of 2019 was filed by the plaintiff for attachment before judgment.

3. In the said I.A. No. 2 of 2019, notice was ordered to furnish security by the defendants who are the revision petitioners herein. The defendants entered appearance through counsel, pursuant to the notice, however they failed to furnish security as directed by the Court below. Therefore, the attachment of the immovable property of the revision petitioners / defendants was ordered through the impugned order, as against which, the present revision petition has been filed.

4. I have heard Mr. M. Muruganantham, learned counsel appearing for the revision petitioners and Mr. P. Muthusamy, learned counsel appearing for the respondent.

5. The learned counsel appearing for the revision petitioners has submitted before this Court that, the very suit itself filed by the respondent before the Court below ought not to have been entertained

by the Court below and the suit itself should have been rejected. I.A. No. 3 of 2019 was also filed to reject the plaint by the revision petitioners / defendants. He would further submit that, even though the said I.A.No.3 of 2019 was rejected by the trial Court, by order dated 30.10.2019, however taking the plea and the ground raised by the revision petitioners / defendants, the Court below returned the very plaint filed by the respondent / plaintiff with a direction to present the same before an appropriate Court having jurisdiction.

6. Therefore by relying upon the said order dated 30.10.2019, the learned counsel appearing for the revision petitioners would submit, as of now, there has been no suit or plaint pending before any Court. When that being so, the order passed in I.A. No. 2 of 2019, which is impugned herein, cannot be given effect to, as no order in the eye of law as on date is in existence, pursuant to the said impugned order. Since property of the revision petitioners was directed to be attached, the said action on the part of the respondent / plaintiff has to be curtailed.

7. Per contra, the learned counsel appearing for the respondent / plaintiff would submit that, even though the revision petitioners / defendants filed the petition to reject the plaint, the same had been dismissed by the said order dated 30.10.2019. Insofar as the present impugned order is concerned, notice was given to furnish security, having receipt of the same, once they entered appearance, security should have been furnished to the satisfaction of the Court, since they have failed to furnish security, the trial Court have justification to pass an order of attachment of the immovable property of the revision petitioners / defendants, therefore the said order cannot be interfered with by this Court.

8. I have considered the said submission made by both sides and perused the materials placed before this Court.

9. No doubt in the plaint filed by the respondent / plaintiff, I.A. No. 2 of 2019 was filed for attachment before judgment, where notice for furnish security was issued, having receipt of the same, the revision petitioners / defendants though had entered appearance, the

trial Court have come forward to pass the said impugned order, therefore the order of attachment was made.

10. In the meanwhile, the very defendants seems to have filed an application in I.A. No. 3 of 2019 to reject the plaint, after having scrutinized the same, the learned Judge while rejecting the said application, i.e., I.A. No. 3 of 2019, has also returned the very plaint filed by the respondent / plaintiff for want of jurisdiction with the direction that, it can be presented before the concerned Court having jurisdiction.

11. Therefore, the fact remains that, as on date, there is no suit pending, therefore once the plaint have already been returned by the Court below, the order passed in the Interlocutory Application i.e., I.A. No. 2 of 2019, in the considered opinion of this Court, cannot be given effect to, as if, it is an order passed in the pending suit.

12. But at the same time, pursuant to the order dated 30.10.2019, if the respondent / plaintiff tries to file the suit, by the

presentation of the plaint before the appropriate Court having jurisdiction and in the meanwhile, if the property of the revision petitioners / defendants is meddled with or any third party right is created as apprehended by the learned counsel appearing for the respondent / plaintiff, certainly some interim protection have to be given for a very limited period.

13. In that view of the order, this Court is inclined to dispose of the Civil Revision Petition with the following directions:

"(i) That the impugned order for the aforesaid reasons cannot be given effect to and the same become inexecutable.

(ii) But at the same time, since the very plaint itself was returned by the Court below, it is open to the respondent / plaintiff to present the same before the Court concerned having jurisdiction within a period of two weeks from the date of receipt of a copy of this order and once such plaint is filed, it is further open to the respondent / plaintiff to file necessary application to seek for whatever interim remedy to protect the interest of the plaintiff in the manner known to law including the application for attachment before judgment.

(iii) Till two weeks period which is given for presentation of plaint before the concerned Court, the revision petitioners / defendants shall not encumber with the property, which is subjected to the attachment through the impugned order with any third party. After lapse of two weeks period, the said order against the revision petitioners for creating any third party right shall automatically get vanished."

14. With these directions and observations, the Civil Revision Petition is disposed of. No costs.

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Index: Yes / No
Speaking order / Non speaking order

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To

The learned Sub-Judge,
Coimbatore.

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R. SURESH KUMAR, J.

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