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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :: 23.04.2019  
Delivered on :: 30.04.2019

CORAM :

**THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**

**C.R.P. (MD) (PD) .No.691 of 2019**

**and**

**C.M.P (MD) .No.3840 of 2019**

**and**

**C.M.A (MD) .No.337 of 2019**

N.S.Chandrasekar : Petitioner/Appellant in both the cases

Vs.

1) B.Manivannan  
represented through his  
power agent

2) M.Satheesh : Respondents in both cases

**PRAYER in C.R.P. (MD)No.691 of 2019:** Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 13.12.2018 passed in I.A.No.243 of 2018 in I.A.No.3 of 2018 in O.S.No.234 of 2017 on the file of I Additional District Judge, Madurai.

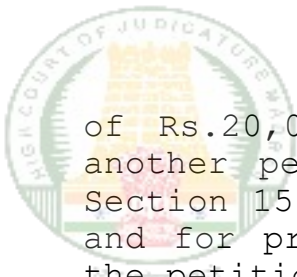
**PRAYER in C.M.A. (MD)No.337 of 2019:** The Civil Miscellaneous Appeal has been filed under Order 43 Rule 1 of Code of Civil Procedure, against the order dated 13.12.2018 passed in I.A.No.244 of 2018 in O.S.No.234 of 2017 on the file of I Additional District Judge, Madurai.

For Petitioner / Appellant : Mr.S.Alagarsamy  
in both cases  
For Respondent : Mr.G.Prabhu Rajadurai  
in both cases

**COMMON ORDER**

The Civil Revision Petition and the Civil Miscellaneous Appeal have been filed to quash the order passed in I.A.Nos.243 and 244 of 2018 in I.A.No.3 of 2018 in O.S.No.234 of 2017, dated 13.12.2018, passed by the learned I Additional District Judge, Madurai.

2.The petitioner / appellant, who is the defendant in the  
<https://hcs.e-cmcs.gov.in/CaseNo/234> of 2017 has filed I.A.Nos.243 and 244 of 2018 in  
I.A.No.3 of 2018 in O.S.No.234 of 2017 contending that the  
respondent herein/plaintiff has filed a suit for recovery of a sum



of Rs.20,00,000/- with interest @ 12% per annum and also filed another petition in I.A.No.3 of 2018 under Order 38 Rule 5 and Section 151 C.P.C., to furnish security for a sum of Rs.25,00,000/- and for praying an interim order of attachment before judgment of the petition mentioned property pending disposal of the suit.

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3.The learned counsel for the petitioner / appellant contended that he has purchased the petition mentioned property on 23.12.2016 for valuable sale consideration through two registered sale deeds bearing registration Nos.1992 and 1993 of 2016 from the respondent/plaintiff. In order to improve his business, the petitioner / appellant obtained short term loan after mortgaging the petition mentioned property by depositing the title deeds on 30.08.2017 in the Yes Bank Ltd., Goripalayam Branch, Madurai. After mortgaging the petition mentioned property, the trial Court has passed an *ex parte* order of attachment before judgment on 01.02.2018. Since the *ex parte* order of attachment before judgment was passed, the petitioner could not furnish security within stipulated period and hence, the attachment before judgment was made absolute. The said attachment passed by the Court also mentioned in the encumbrance certificate on 14.05.2018.

4.The learned counsel for the petitioner / appellant further contended that since his business transactions with the Bank were affected, he has come forward with the petition in I.A.Nos.243 and 244 of 2018 to raise the order of attachment before judgment by substituting the properties mentioned as security for the order passed in I.A.No.3 of 2018 in O.S.No.234 of 2017. The date of *ex parte* order of attachment was made on 01.02.2018 and the same was made absolute and it has been entered into the encumbrance on 14.05.2018. The petition to substitute the petition mentioned property as security to raise the order of attachment before judgment passed in I.A.No.3 of 2018 in O.S.No.234 of 2017 for the same value. The further contention of the learned counsel for the petitioner / appellant is that he furnished the property to raise order of attachment before judgment is in joint patta No.4813. The petitioner / appellant along with Sundarajan and Jayabarathi are the co-owners of the petition mentioned property. The petitioner / appellant has also filed acceptance deed, dated 24.04.2018, duly signed by the co-owners and counter signed by the Notary Public.

5.The learned counsel for the respondent has contested both the applications by stating that the petitioner / appellant has already mortgaged the petition mentioned property and hence, he does not confer any title or charge lien and the contentions that the attachment order affect the business of the petitioner with bank, are all denied as false and misleading of facts. He further contended that the petitioner has not produced any documentary evidence to prove the same. He contended further that the market value of the property substituted for security for the amount is very low to the suit amount. The property to be substituted is a disputed property and not free from encumbrance and also there is no



specific and sufficient cause to raise the attachment by the petitioner / appellant.

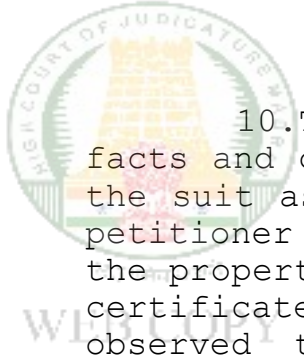
6.The trial Court has observed the contention made by both sides and also observed that the suit is filed for recovery of a sum of Rs.21,33,333/- with subsequent interest at 12% p.a from the date of plaint till the date of realisation and also costs against the defendant. I.A.No.3 of 2018 was filed under Order 38 Rule 5 CPC to furnish security for a sum of Rs.25,00,000/- and an order of interim attachment before judgment of the petition mentioned property pending disposal of the suit, was passed. The petitioner purchased the petition mentioned property under two sale deeds. In order to improve his business, he obtained short term loan and mortgaged the property by depositing title deeds. After mortgage, the trial Court has passed an ex parte order of attachment before judgment on 01.02.2018. Since the petitioner has not furnished security within the stipulated period, the attachment was made absolute. When the business transactions of the petitioner with the bank were affected, the petitioner / appellant has filed the above interim applications to raise attachment after substituting the other property mentioned in the petition for the same value. But, it is observed by the trial Court that within the time stipulated by the Court, the petitioner / appellant has not furnished any security.

7.The trial Court has also observed the objections raised by the respondent by stating that the petitioner has not produced any documentary evidence to prove that the petitioner does not confer any title or charge, lien or property and the attachment order affect the business of the petitioner. The trial Court further observed that the market value of the property substituted for security for the amount is very low to the suit amount. Further, the trial Court observed that the valuation report pertaining to the land in R.S.No.1476/1, which is not the property offered for substitution. According to the petitioner / appellant, the property under attachment has already been subjected to mortgage and there cannot be a mechanical attachment.

8.The trial Court has also observed that though the encumbrance certificate produced on the side of the petitioner / appellant discloses a subsisting mortgage on the property under attachment, the value of the property is sufficient to satisfy the decree to be passed, even after absolving the existing liabilities under the mortgage. The property offered by the petitioner / appellant for substitution is not the individual property of the petitioner / appellant, but the joint properties owned by other parties. After observing all these facts, the trial Court has dismissed the said petitions. Against which, the petitioner / appellant has filed the above Civil Revision Petition and the Civil Miscellaneous Appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

9.Heard the rival submissions made by both counsel.



10. The observation made by the trial Court is based on the facts and circumstances of the case and also regarding the value of the suit as well as the value of the property. It is seen that the petitioner / appellant has not furnished security in time and hence the property has been attached by the Court. Even in the encumbrance certificate, there was a reference of earlier mortgage. It is observed that when the property offered by the petitioner / appellant is more sufficient to satisfy the debts, the petitioner cannot have any grievance for substituting the said property. When the Court feels that though the property is under mortgage at the time of attachment, the value of the property must be sufficient to satisfy the decree to be passed even after absolving the existing liability under the mortgage. The property is now offering by the petitioner / appellant does not belong to him exclusively and the consent deed cannot be relied upon by him. Hence, the orders passed by the trial Court is very much reasonable and this Court does not interfere with the orders passed by the trial Court. Further, the trial Court is directed to proceed with the case at the earliest, since the petitioner / appellant stated that he has already obtained loan for his business and the said attachment is very much affected his business. Both the parties are also directed to co-operate with the case.

11. In the result, the Civil Revision Petition as well as the Civil Miscellaneous Appeal are dismissed by confirming the orders passed by the trial Court in I.A.Nos.243 & 244 of 2018, dated 13.12.2018. No costs. Consequently, the connected miscellaneous petitions is closed.

sd/  
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Judge, Madurai.

2. The Section Officer,  
V.R. Section, (2 COPIES)  
Madurai Bench of Madras High Court, Madurai.

+2 CC to Mr.G.PRABHU RAJADURAI, Advocate SR-64151, 64152

+1 CC to Mr.S.ALAGARSAMY, Advocate ( SR-64226[F] dated 30/04/2019 )

order made in  
**C.R.P. (MD) (PD) .No.691 of 2019 and**  
**C.M.A (MD) .No.337 of 2019 and**  
**C.M.P (MD) .No.3840 of 2019**  
Dated:-30.04.2019