

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.187 of 2020

P.Mani

.. Appellant

-VS-

K.S.P.Mahalingam

.. Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Order XLIII, Rule 1(q) of the Civil Procedure Code, to set aside the fair and decretal order dated 14.10.2019 made in I.A.No.417 of 2019 in O.S.No.328 of 2019 on the file of the Court of Principal District Judge, Erode.

For Appellant :: Mr.S.Mukunth

For Respondent :: Mr.K.S.Jeyaganeshan

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The appellant is the plaintiff before the trial Court. After filing the suit for recovery of a sum of Rs.15,36,750/- due on the cheque with future interest at the rate of 18% per annum, moved I.A.No.417 of 2019 in O.S.No.328 of 2019 under Order XXXVIII, Rules 5, 6 read with Section 151 of the Code of Civil Procedure to direct the respondent/defendant to furnish sufficient security for the suit claim with subsequent interest and cost of the suit. When the trial Court took up the said I.A.No.417 of 2019 on 14.10.2019, it was represented on behalf of the respondent/defendant that the respondent/defendant had already furnished security in Appendix-F, Form-VI and since the original title deeds of the petition mentioned property have been pledged as security for the repayment of the credit facilities availed from the State Bank of India, SME Branch, Erode, he was not in a position to produce the original title deeds before the Court. At this juncture, learned counsel appearing for the respondent herein also submitted that when the

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respondent herein has already furnished security by pledging the petition mentioned property for repayment of credit facilities availed by the respondent from the State Bank of India, SME Branch, Erode, it is not possible for the respondent to furnish security for the suit claim, therefore, the prayer made by the appellant/plaintiff herein under Order XXXVIII, Rules 5 & 6 read with Section 151 of the Code of Civil Procedure to furnish sufficient security for the suit claim, has been duly complied with, therefore, the interlocutory application was dismissed.

3. I also find no merits in the civil miscellaneous appeal. Although the learned counsel appearing for the appellant submitted that even after giving security, the respondent is taking steps to alienate the property, it is quite impossible. The reason is that when the respondent has already furnished the petition mentioned property to the State Bank of India, SME Branch, Erode as security for the suit claim and the original title deeds of the petition mentioned property have been pledged as security for repayment of the credit facilities with the State Bank of India, SME Branch, Erode, the argument advanced by the learned counsel for the appellant that the respondent is going to alienate the same property is highly unacceptable. Such a view taken by the Court below does not call for interference. Therefore, the civil miscellaneous appeal fails and it is dismissed. Consequently, C.M.P.No.1448 of 2020 is also dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge
Erode

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