

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (NPD) No.1674 of 2020
and C.M.P.No.10364 of 2020

M.Sekar

... Petitioner

Vs.

N.S.Deepa

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed by the Additional District Judge, Dharmapuri, dated 11.02.2020 in I.A.No.56 of 2018 in O.S.No.47 of 2018.

For Petitioner : Mr.P.Valliappan

ORDER

The present Civil Revision Petition is directed against an order of dismissal passed in the petition filed under Order XXXVIII Rule 5 of Civil Procedure Code.

2. The reason for dismissal was that the framing of the petition

was not proper and without directing the defendant to show cause as to why he should not furnish security, the petitioner straight away asked for attachment of property, which is owned by several persons. Therefore, it was dismissed by the trial Court.

3. I perused the affidavit filed in support of the petition under Order XXXVIII Rule 5 C.P.C. It is seen that the petitioner has sought for a prayer of conditional order of attachment of the properties before judgment. Even though the prayer is wrong, the trial Court should have issued notice to the defendant to show cause as to why he should not be directed to furnish security.

4. Considering the facts and circumstances of the case, the order passed by the trial Court dated 11.02.2020 in I.A.No.56 of 2018 in O.S.No.47 of 2018 on the file of the learned Additional District Judge, Dharmapuri is set aside and the matter is remitted back to the trial Court giving liberty to the petitioner to file a petition afresh in conformity with Order XXXVIII Rule 5 C.P.C. and the trial Court is directed to dispose of the same after affording an opportunity to all the parties concerned.

With the above directions, the Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.09.2020

Note: Issue order copy on or before 21.09.2020

asi/ms

To

The Additional District Judge,
Dharmapuri.



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M.GOVINDARAJ, J.

asi/ms



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