

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP.No.3041 of 2018
and
CMP No.17657 of 2018

P. Jayasankar ... Petitioner

C. Periyasamy Vs ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 06.12.2017 in I.A.No.112 of 2017 in O.S.No.83 of 2017 on the file of the I Additional Subordinate Court, Salem.

For Petitioner : Mr.T. Karunakaran

For Respondent : Mr. P. Jagadeesan

O R D E R

This revision is against an order directing the petitioner to furnish security for the suit claim in O.S.No.83/17.

2. The suit is laid for recovery of a sum of Rs.6,71,778 with subsequent interest due on a promissory note said to have been executed by the petitioner for a sum of Rs.4,50,000/- on 08.06.2014. Along with the suit, the respondent herein filed an application in I.A.No.112 of 2017 seeking attachment before judgment. The said application was resisted by the respondent contending that he does not intend selling the property and that he has already mortgaged the property in favour of Canara Bank on 14.10.2010. Hence, the same cannot be attached. The trial Court considered the claim and by an order dated 06.12.2017 directed the petitioner to furnish security for the suit claim. Against this direction, the petitioner has come up with the civil revision petition.

3. Heard Mr. T. Karunakaran, learned counsel appearing for the petitioner and Mr. P.Jagadeesan, learned counsel appearing for the respondent.

4. Mr. T. Karunakaran, learned counsel would contend that the trial Court erred in directing the petitioner to furnish

security despite the fact that he has made a statement that he will not alienate the property in his counter affidavit. The fact that there is already a mortgage over the property, that is sought to be attached is also taken as a ground to attack the order of the trial Court as erroneous.

5. I have considered the submissions of the learned counsel. I find the trial Court had considered the rival claims and has come to the conclusion that the petitioner should be directed to furnish security towards the suit claim. The trial Court had concluded that the mere fact that there is statement in the affidavit that the petitioner will not alienate the property is not sufficient considering the fact that the petitioner had already mortgaged the property with Canara Bank.

6. The reasons assigned by the trial Court for directing the petitioner to furnish security cannot be said to be materially irregular or illegal. All that the trial Court has done is only to direct the petitioner to furnish security. If the petitioner fails to furnish security, an attachment order will follow, which can be questioned by the petitioner by filing an appeal under Order 43 Rule 1(q). Therefore, I do not think I should interfere in exercise of the Powers under Article 227 at this stage. The revision fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mrp

To

1.I Additional Sub Judge, Salem.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.T.Karunakaran, Advocate SR.32388
+1cc to Mr.P.Jagadeesan, Advocate SR.32309

CRP.No.3041 of 2018

and

CMP No.17657 of 2018

BR(CO)

CB(23/11/2020)