

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : .02.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.245 of 2017
CMP.Nos.1048 and 1049 of 2017

(Through Video Conferencing)

N.Gopalasamy, by its Power Agent K.Sabapathy

Petitioner

Vs

D.Gopalasamy

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, against the fair and final order dated, 03.12.2016, made in IA.No.631 of 2016, in OS.No.308 of 2016, by the III Additional District Sessions Court, Coimbatore.

For Petitioner : Mr.Venkata Raman

For Respondent : Mr.S.Veeraraghavan

ORDER

1. This Civil Revision Petition has been filed, against the fair and final order dated, 03.12.2016, made in IA.No.631 of 2016, in OS.No.308 of 2016, by the III Additional District Sessions Court, Coimbatore.
2. The facts of the case are that the Plaintiff is the Petitioner and the Defendant is the Respondent. The suit was filed for recovery of money with interest. In the suit, the Plaintiff has filed the present IA, seeking for a direction, calling

upon the Defendant to furnish security to the value of the suit claim, failing which to pass an order of attachment of the property more fully described in the Schedule, before judgement. By the impugned order, the said application was dismissed and hence, this Civil Revision Petition has been filed.

3. The learned counsel for the Petitioner has submitted that the Respondent is attempting to alienate his properties and if he succeeds in his attempts, the Petitioner will not be able to realise the fruits of the decree and hence, the present IA may be allowed.
4. The learned counsel for the Respondent has submitted that since the properties sought to be attached were already under mortgage with the Banks, there cannot be any direction against him to furnish security to the tune of the suit claim and consequently, the question of attachment of the said properties before judgement does not arise.
5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. In this case, according to the Petitioner, the Respondent had availed a personal loan and the suit has been filed for recovery of money with interest. The present IA has been filed for a direction to the Defendant to furnish security to the value of the suit claim, failing which to pass an order of attachment of the petition mentioned premises before judgement, which was denied by the impugned order.
7. On perusal of the records, it is seen that in the affidavit, the Petitioner has stated that the Respondent is making hectic attempts to alienate. That

averment is sufficient to order attachment before judgement.

8. The Petitioner has further stated in the affidavit that in so far as the registered encumbrances are concerned, attachment before judgement may be ordered subject to the liabilities contracted by the Respondent with the Banks.

9. In view of the above, this Civil Revision Petition is allowed. The impugned order dated, 03.12.2016, made in IA.No.631 of 2016, in OS.No.308 of 2016, by the III Additional District Sessions Court, Coimbatore is set aside and the said IA is allowed. No costs. Consequently, the connected MPs are closed.

.02.2021

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The III Additional District Sessions Court, Coimbatore.

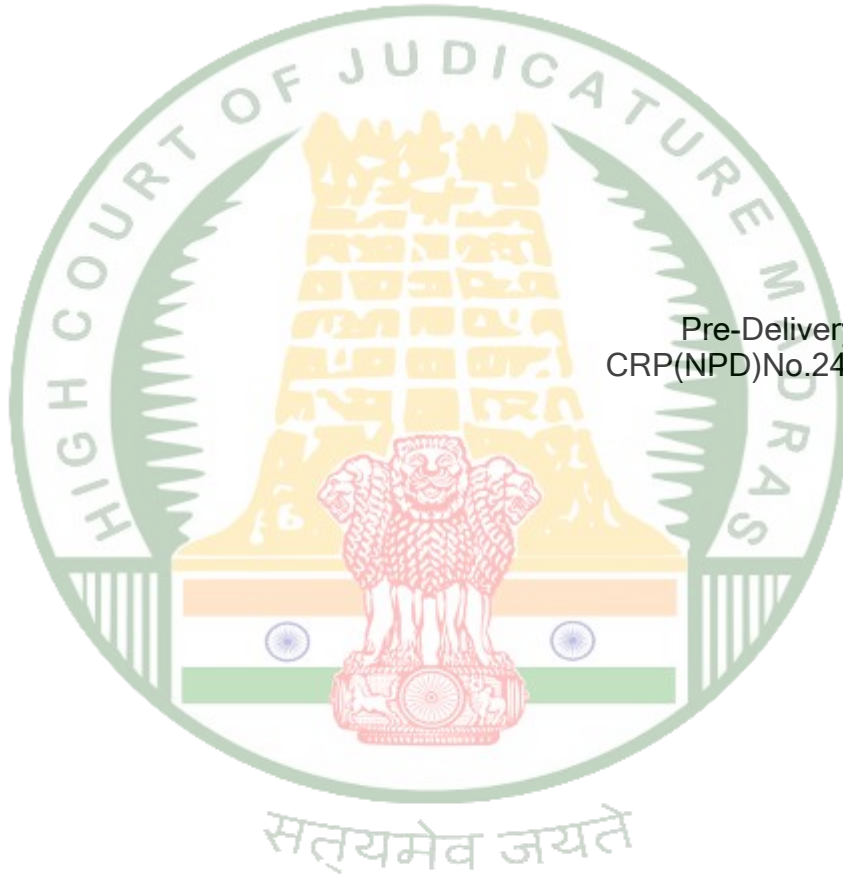
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CRP(NPD)No.245 of 2017

A.A.NAKKIRAN, J.

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Pre-Delivery Order in
CRP(NPD)No.245 of 2017

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