



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 22.11.2021**

**CORAM**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

**C.R.P (PD) (MD)No.1803 of 2021**

**and**

**C.M.P(MD) No.9698 of 2021**

A.Vijhay Pragash

... Petitioner

**Vs.**

A.Kumaraswami

... Respondent

**PRAYER:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order made in I.A.No.01 of 2021 in O.S.No.189 of 2021 on the file of the 1<sup>st</sup> Additional District Judge (PCR), Trichy, dated 30.07.2021 by allowing this revision.

For Petitioner : Mr.R.Sundar

**ORDER**

The petitioner/defendant, aggrieved by the order directing the petitioner not to make any encumbrance till 05.08.2021 which is thereafter being extended periodically, has approached this Court under Article 227 of the Constitution of India challenging the said order.

2.The facts in brief are as follows:-

(i)The plaintiff and the defendant are siblings. The plaintiff had filed a suit in O.S.No.189 of 2021 on the file of the Additional District Judge, Trichy, for recovery of a sum of Rs.12,92,545.83/- with interest at 12% per annum from the date of suit till realization. This amount is claimed by the plaintiff as the defendant's share towards debt of their father A.K.Arumugasamy, which had been settled by the plaintiff. Along with the said plaint, the plaintiff had taken out an application in I.A.No.01 of 2021 seeking a direction to the defendant to furnish the security failing which to order attachment of the petition mentioned property.



(ii) The plaintiff in the affidavit filed in support of the said application had stated that the defendant had no intention to compensate the plaintiff and in order to defeat the rights of the plaintiff, he was trying to alienate his property. That apart, he was also indebted to several persons heavily and the petition mentioned property is the only property available now with the plaintiff.

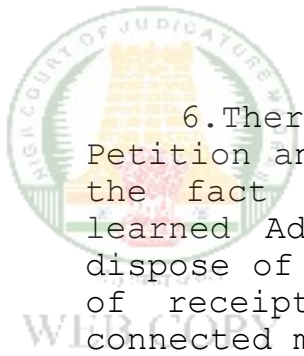
(ii) The learned 1<sup>st</sup> Additional District Judge, Trichy, before whom the interlocutory application was moved on 08.07.2021, had passed an order directing the petitioner herein to furnish security equivalent to the suit claim as he was convinced that the respondent/plaintiff had made out a prima facie case. Notice was ordered to the defendant and private notice was also permitted. On 30.07.2021, the petitioner had entered appearance through counsel and had taken out a memo stating that there was an error in his name.

(iii) The learned counsel for the plaintiff who undertook to amend the name informed the court that there may be an attempt by the defendant to sell the property and therefore a direction be given to the defendant not to encumber the scheduled property in the meanwhile. Accordingly, the learned Judge had directed the petitioner/defendant not to encumber the property till 05.08.2021. This order is being periodically extended. Challenging the said order dated 30.07.2021, the petitioner/defendant is before this Court.

3. The learned counsel for the petitioner would submit that the order of attachment without affording an opportunity to the petitioner/defendant is bad. He would further submit the very claim itself is baseless, since the respondent had voluntarily made the payment and he cannot seek to mulct the liability on the petitioner.

4. Heard the learned counsel for the petitioner and perused the records.

5. A perusal of the order would indicate that the learned Judge had followed the procedure contemplated under the provision of Order 38 Rule 5 of Code of Civil Procedure. The petitioner was directed to furnish security to the tune of suit claim and when the petitioner had appeared on 30.07.2021, instead of filing the counter to above petition or showing cause as to why he should not furnish security, the petitioner had only stated that his name as shown in the plaint and the petition was erroneous. Further, the learned Judge has not passed an order of attachment, but has only directed the petitioner to refrain from encumbering the property. When this order is not a final order, it is well open to the petitioner/defendant to file counter and get the order suspended/ dismissed. Without doing so, the petitioner has rushed to this Court.



6. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. However, considering the fact that the interim order is extended periodically, the learned Additional District Judge (PCR), Trichy, is directed to dispose of I.A.No.01 of 2021 within a period one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The 1<sup>st</sup> Additional District Judge (PCR),  
Trichy.

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**and**

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**22.11.2021**

**TSK** (CO)

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