



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.841 of 2020

and

C.M.P.No.4471 of 2022

M/s.Sri Amman Fincorp,
A duly constituted Partnership firm
Represented by its Partner cum Power Agent,
P.Ganesh,
S/o.Palanivel,
Carrying on business in Financial dealings
Door No.3C, Municipal Colony Road,
Veerappanchatram & Post, Erode - 4,
Erode Taluk.

...Petitioner

Vs.

1.M/s.K.K.Thangamuthu & Co.,
A duly constituted Partnership firm
Represented by its Partner
T.Jagadish
S/o.K.Thangamuthu
Carrying on business in Financial dealings
Door No.9, Nethaji Nagar,
Moolapalayam, Erode - 2.

2.T.Jagadish

Page 1 of 8



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

WEB COPY

3.K.Thangamuthu

4.S.Nithiya

5.V.Jothimani

6.Minor J.Prajaji Aurawind

(Minor being represented by his father R.Jagadish/Guardian)

7.Minor J.N.Sanjey Aurawind

... Respondents

(Minor being represented by his father R.Jagadish/Guardian)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 13.01.2020 passed in I.A.No.390 of 2019 in O.S.No.294 of 2019 on the file of the Principal District Court, Erode.

For Petitioner : Mr.T.Murugamanickam Sr.Counsel
for Mr.C.S.Saravanan

For RR1 & 2 : Mr.M.Karthik

ORDER

The present Civil Revision Petition is filed against the fair and decretal orders dated 13.01.2020 passed in I.A.No.390 of 2019 in O.S.No.294 of 2019 on the file of the Principal District Court, Erode.



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

WEB COPY

2.The revision petitioner is the plaintiff in O.S.No.294 of 2019 on the file of Principal District Court, Erode. The suit was filed for recovery of a sum of Rs.38,00,000/- from the respondents/defendants based on a cheque dated 02.04.2018 issued by the defendants. Along with the suit, they filed I.A.No.390 of 2019 under Order XXXVIII Rule 5 and Section 151 of CPC directing the respondents/defendants to furnish sufficient security to the tune of Rs.40,00,000/- towards the suit claim within the date fixed by the Court and on their default, order attachment of the petition mentioned property before judgement. The Principal District Judge issued notice to the defendants to furnish security vide his orders dated 28.05.2019. Upon notice, the respondents/defendants entered appearance through a counsel. However, they did not furnish security and on the other hand, they filed an undertaking affidavit stating that since the petition mentioned property was already attached in O.S.No.103 of 2019 on the file of learned II Additional District Court, Erode, the same cannot be attached in the present suit and undertook to not alienate the property to



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

WEB CODE

strangers till the disposal of the suit. Recording the affidavit filed by the respondents/defendants, the learned Principal District Judge, Erode, dismissed the I.A.No.390 of 2019 vide her orders dated 13.01.2020. Aggrieved over the same, the present Civil Revision Petition is filed.

3.Heard Mr.T.Murugamanickam, learned senior counsel assisted by Mr.C.S.Saravanan for the revision petitioner and Mr.M.Karthik, learned counsel appearing for the respondents.

4.The main contention of Mr.T.Murugamanickam, learned senior counsel is that merely because the petition mentioned properties are already attached in another suit, the same would not absolve the respondents/defendants liability and that, once the security has not been furnished, the property ought to have been attached, as per Order XXXVIII Rule 5, which reads as follows:

"5.Where defendant may be called upon to furnish security for production of property"



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

WEB COPY

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy, the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void."

The learned senior counsel further contended that in the instant case, the respondents/defendants failed to explain as to why they need not furnish security to the suit claim. The reason for attaching the petition mentioned



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

WEB COPY

properties in another suit, cannot be taken into consideration for absolving the liability of respondents/defendants. Equally, mere filing of an undertaking affidavit would not be sufficient.

5.Per contra, Mr.M.Karthik, learned counsel appearing for the respondents 1 & 2 contended that the respondents/defendants filed an undertaking affidavit before the trial Court stating that the petition mentioned properties were already attached in another suit and based on the same, the trial Court rightly dismissed the application.

6.Such an argument advanced by the learned counsel for the respondents/defendants cannot be sustained. As per the procedure contemplated under Order XXXVIII Rule 5 & 6 of CPC, the respondents/defendants ought to have furnished security for the amount due and payable to the revision petitioner/plaintiff and the trial Court had committed an error in dismissing the petition filed by the revision petitioner under Order XXXVIII Rule 5 of CPC mainly based on the



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

WEB CODE

affidavit given by the respondents/defendants. In such circumstances, the order passed in I.A.No.390 of 2019 is liable to be set aside. Consequently, the petition mentioned properties in I.A.No.390 of 2019 are attached.

7.With the above observations, the Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

11.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



WEB COPY



C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

R. HEMALATHA, J.
mtl

To

- 1.The Principal District Court, Erode.
- 2.The Section Officer, VR Section, High Court, Madras.

C.R.P.No.841 of 2020
and C.M.P.No.4471 of 2020

11.10.2022