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CRP.PD.No.943/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.943/2019 and CMP.No.6149/2019

[Video Conferencing]

R.Shyamala

.. Petitioner/Defendant

Vs.

A.Jani Sahib

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to pass an order to set aside the fair and decreetal order dated 24.04.2017 made in I.A.No.25/2015 in O.S.No.11/2015 on the file of the learned District Judge at Thiruvannamalai.

For Petitioner	:	M/s.Sharmila Gunaraj
For Respondent	:	Mrs.S.Suseela Devi

ORDER

- (1) This Civil Revision Petition is preferred against the order dated 24.04.2017 passed by the learned District Judge at Thiruvannamalai allowing an application in I.A.No.25/2015 in O.S.No.11/2015 which was filed for attachment before judgment.



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- (2) The respondent as plaintiff filed the Suit in O.S.No.211/2015 for recovery of a sum of Rs.14,16,000/- together with interest at 12%. The Suit was on the basis that there was an Agreement of Sale in respect of a property of the defendant and that a sum of Rs.12,00,000/- was paid by the plaintiff as advance.
- (3) It is further stated that the plaintiff was ready and willing to perform his part of contract and to pay the balance of sale consideration and that the defendant however evaded to perform her part of contract. In the said circumstances, the plaintiff has come forward with the Suit for recovery of a sum of Rs.14,16,000/-
- (4) During the pendency of the Suit, the plaintiff filed an application in I.A.No.25/2015 for attachment of a property of defendant before judgment. The defendant /revision petitioner disputed his liability in Written Statement filed in the main Suit. After considering the merits of the case, the Lower Court allowed the petition. Aggrieved by the same, the Civil Revision Petition is filed by the revision petitioner/defendant in the Suit.
- (5) The main grievance of the revision petitioner is that the Lower Court without even giving an opportunity to the defendant to



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furnish security, passed an order of attachment before judgment and therefore, the order is unsustainable as it is against the mandatory provisions of Order 38 Rule 5 CPC.

- (6) Learned counsel appearing for the revision petitioner has now stated that the revision petitioner is prepared to offer an alternative property as security and therefore that may be considered.
- (7) It is true that the Trial Court passed an order without affording an opportunity to the revision petitioner to furnish security before passing the order of attachment. This factual position is not even disputed by the learned counsel for the respondent in the course of hearing.
- (8) This Court is of the view that the impugned order is liable to be set aside and the Lower Court can be directed to consider the security that is offered by the revision petitioner. Though the learned counsel for the petitioner states that a Memo has been filed describing the property to be offered as security, the Memo is not placed before the Court.
- (9) In the factual background this Court is inclined to passed the following order.



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(10) The Civil Revision Petition is **allowed** and the impugned order dated 24.04.2017 in I.A.No.25/2015 in O.S.No.11/2015 is set aside. The matter is remitted back to the Lower Court to consider the Memo that may be filed by the learned counsel for the defendant within a period of two weeks from the date of receipt of a copy of this order regarding furnishing of security capable of satisfying the suit claim or as may be found adequate by the Lower Court. The learned District Judge, Tiruvannamalai, may pass appropriate orders within the period of four weeks from the date of receipt of a copy of this order. It is also open to the respondent to raise their objections with regard to the adequacy of security that is being offered by the petitioner. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

31.01.2022

cda
Internet : Yes

To

The District Judge,
District Court, Thiruvannamalai.



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S.S.SUNDAR, J.,

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