



C.R.P.No.1579 of 2020
and C.M.P.Nos.9605 & 9607 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

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

C.R.P.No.1579 of 2020

and

C.M.P.Nos.9605 & 9607 of 2020

M.Jayarajan

... Petitioner

Vs.

1.K.Nagaraj

2.Varalakshmi

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.03.2020 passed in I.A.No.509 of 2019 in O.S.No.226 of 2019 on the file of the Principal District Judge, Villupuram.

For Petitioner : Mr.N.Thiagarajan

For Respondent : Ms.R.Meenal

ORDER

The present Civil Revision Petition is filed challenging the fair and decreetal orders dated 17.03.2020 passed in I.A.No.509 of 2019 in O.S.No.226 of 2019 on the file of the Principal District Court,



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2.The revision petitioner is the plaintiff in O.S.No.226 of 2019 on the file of the Principal District Judge, Villupuram. He filed the suit against the respondents/defendants for recovery of a sum of Rs.25,00,000/- together with interest at the rate of 12% p.a. from 18.11.2016.

3.The case of the revision petitioner/plaintiff is that the defendants borrowed a sum of Rs.15,00,000/- and executed a loan document on 18.11.2016 promising to repay the principal together with interest at the rate of 12% per annum and that though he issued a notice to the defendants calling upon them to repay the amount due under the loan document dated 18.11.2016, the defendants sent a reply, which contained false allegations. Along with the suit the plaintiff filed I.A.No.509 of 2019 under Order XXXVIII Rule 5 CPC to attach the property of the defendants before the judgment.



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4.The respondents/defendants filed their counter and after full contest, the learned Principal District Judge, Villupuram, dismissed the petition vide her orders dated 17.03.2020 on the following grounds :

- 1) The plaintiff had filed only a loan document, the execution of which is denied by the defendants in their written statement.
- 2) No sufficient grounds were made to attach the property of the defendants under Order XXXVIII Rule 5 CPC.

Aggrieved over the same, the present Civil Revision Petitioner is filed.

5.Heard Mr.N.Thiagarajan, learned counsel appearing for the revision petitioner and Ms.R.Meenal, learned counsel appearing for the respondents.

6.At the outset, it may be observed that the suit was filed by the plaintiff based on an alleged loan document dated 18.11.2016. The defendants in their written statement had specifically denied the execution of the said document. In the circumstances, the plaintiff has to prove the execution of the loan document dated 18.11.2016.



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7.Mr.N.Thiagarajan, learned counsel appearing for the revision petitioner contended that it is sufficient that the respondents/defendants gave an undertaking to not to alienate the petition mentioned properties in I.A.No.509 of 2009.

8.Per contra, Ms.R.Meenal, learned counsel appearing for the respondents/defendants relied on the decision in "*Raman Tech & Process Engg. Co. and Another Vs Solanki Traders*" reported in "(2008)2 SCC 302", wherein it has been held thus :

"4.The object of supplemental proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of order 38 rule 5 CPC in particular, is to prevent any defendant from defeating the realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The Scheme of Order 38 and the use of the words `to obstruct or delay



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the execution of any decree that may be passed against him' in Rule 5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. This would mean that the court should be satisfied the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5CPC. It is well-settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.



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5. The power under Order 38 Rule 5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It Should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlement, under threat of attachment."

The plaintiff in the instant case should show, *prima facie*, that his claim is bonafide and valid and also satisfy the Court that the defendants are about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order XXXVIII Rule 5 CPC. In the instant case this not specifically proved by the plaintiff.



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9.In the decision in "*Raman Tech & Process Engg. Co. and Another Vs Solanki Traders*" (cited supra) it has been held that the purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged.

10.In the facts and circumstances, I do not find any infirmity in the orders passed by the trial Court and accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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



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R. HEMALATHA, J.
mtl

To

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

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