



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2021

Pronounced on : 14.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.3362 of 2021

and

C.MP.No.19331 of 2021

S.Ravichandran

..Appellant/Defendant

Versus

N.Muthukumaran

..Respondent/Plaintiff

This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 C.P.C., against the order dated 04.10.2021 passed by the learned Principal District Judge, Tirupur in IA No.434 of 2021 in OS No.371 of 2021.

For Appellant : Mr.P.Sidharthan

For Respondent : Mr.I.Abrar Md Abdullah for Caveator

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the fair and decretal order dated 04.10.2021 made in I.A.No.434 of 2021 in O.S.No.371 of 2021 on the file of Principal District Court, Tirupur.

2.The petitioner herein is the defendant and the respondent is the plaintiff in a suit in O.S.No.371 of 2021. The said suit has been filed by the respondent herein, for recovery of a sum of Rs.71,61,675/- along with interest based on the loan confirmation cum undertaking deed executed by the petitioner in favour of the respondent having borrowed the loan amount of Rs.60,00,000/-. Though for the purpose of repayment of loan amount, the petitioner gave various cheques with different denominations, the same have been returned by the concerned bank for in-sufficient funds, which prompted the respondent to file the suit. Along with the suit, the respondent has also moved an interlocutory application in I.A.No.434 of 2021 under Order



3. In the said Interlocutory Application, the respondent/plaintiff claimed that the petitioner/defendant has failed to repay the loan amount borrowed by him despite repeated demands and the cheques issued in lieu of repayment of suit amount were also dis-honoured and that there is every likelihood of the petitioner/defendant to dispose of the property which stood in his name with malafide intention to defeat the suit claim.

5. On consideration of the contentions raised by both sides and also the materials placed on record, the trial Court by order dated 04.10.2021, allowed the Interlocutory Application and directed the petitioner herein, to furnish security for the satisfaction of the suit claim and also ordered impleadment of wife of the petitioner as party defendant in the suit. Aggrieved by the said order, the petitioner has come forward with the present appeal.

6. The learned counsel appearing for the petitioner would contend that when admittedly the petitioner transferred and settled the subject property in favour of his wife by way of registered settlement deed, the petitioner is no longer owner of the said property and the trial Court though aware of this fact, erroneously ordered the application which requires interference of this Court. The learned counsel would also contend that the respondent/plaintiff filed a suit on 22.07.2021, while the petitioner/defendant executed the settlement deed in favour of his wife as early as on 06.07.2021 i.e., prior to the filing of the suit. The learned counsel for the petitioner would also contend that the suit has been filed by the respondent based on



fabricated undertaking and confirmation letter and also by the documents which were forged by the respondent. He would point out that the trial Court has erred in coming to the conclusion that the petitioner has executed the settlement deed in a hurried manner to defeat the suit claim. He would also contend that unless the respondent proved the suit claim, he is not entitled for recovery of the suit amount and for this purpose, there is no need to attach the property even before the judgment. Therefore, the learned counsel prays for setting aside the order passed by the Court below.

7. Per contra, the learned counsel appearing for the respondent would submit that the trial Court after considering the arguments and documents put forth before it, had rightly passed an order, directing the petitioner to execute security for the satisfaction of the suit claim and the petitioner wife Tmt.R.Kokulavani is impleaded as second defendant in this suit which called for no interference by this Court.

8. The suit filed by the respondent herein is for recovery of money from the petitioner based on cheques, issued by the petitioner which was dishonoured by the bank as insufficient funds. Admittedly, the respondent issued a legal notice on 19.04.2021 and reply notice was sent by the petitioner on 30.04.2021. The trial Court has also observed in its order about the notice sent by Whatsapp and e-mail to the petitioner. It is quite obvious that the petitioner after having come to know about the action being taken by the respondent to recover the suit claim with a dishonest intention and to defraud the claim of the respondent, settled the petition mentioned property in favour of his wife on 06.07.2021.

9. The trial Court has also rightly observed that if the petitioner herein is allowed to take the plea that the property has been settled in favour of his wife, the respondent herein cannot make a claim against the petitioner and it would frustrate the very object of the provisions of the law. It would be different case if it is the case of the petitioner that he had settled the property very long back prior to the issuance of legal notice by the respondent. But the petitioner after receiving the legal notice from the respondent, had settled the petition mentioned property in favour of his wife which proves the clear intention of the petitioner to defraud the claim of the respondent.

10. Therefore, this Court is of the considered opinion that the trial Court on considering the facts and circumstances, had rightly invoked Section 151 of C.P.C., and by following the guidelines of the Supreme Court, directed the petitioner to execute the bond for the suit claim and impleaded the wife of



the petitioner viz., Tmt.R.Kokulavani as 2nd defendant in the suit.

11. In view of the discussions made above, this Court does not find any infirmity or irregularity in the order of the trial Court. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vum

To

The Principal District Judge,
Tirupur.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Sidharthan, Advocate, S.R.No.9169

+1cc to Mr.I.Abrar Md Abdullah, Advocate, S.R.No.9495

C.M.A.No.3362 of 2021

CA(CO)
RGA(07/04/2022)