



WEB COPY



C.R.P.No.3026 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3026 of 2022
and
C.M.P.No.16320 of 2022

N.Narayanan

... Petitioner

Versus

P.R.Shankar

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order dated 25.07.2022 made in I.A.No.1 of 2021 in O.S.No.1243 of 2021 on the file of the XX Additional District and Sessions Judge City Civil Court, Allikulam, Chennai - 600 003.

For Petitioner : M/s.Vasudha Thagarajan



ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 25.07.2022 made in I.A.No.1 of 2021 in O.S.No.1243 of 2021 on the file of the XX Additional District and Sessions Judge City Civil Court, Allikulam, Chennai - 600 003.

2. The respondent herein filed a suit for recovery of money. While pending suit, he filed an application for attachment before Judgement in I.A.No.1 of 2021 in O.S.No.1243 of 2021 on the file of the XX Additional District and Sessions Judge City Civil Court, Allikulam, Chennai - 600 003. In the affidavit filed in support of the said application, it was averred by the respondent that the petitioner herein is attempting to sell away his property in order to evade from the decree which is likely to be passed.

3. The Revision Petitioner filed a counter, wherein it was mentioned that the subject property is the ancestral property of the petitioner's daughter. It was further averred in the counter that the application which was filed by the respondent does not satisfy the requirements of Order 39 Rule 5 and mere apprehensions and assumptions cannot be reasons for grant of such relief.

4. The Court below on consideration of the materials came to the

conclusion that the revision petitioner was not consistent in taking his stand in his counter with regard to the ownership of the property sought to be attached.

Having noted the same, the Court below came to the conclusion that the respondent herein proved *prima facie* case as against the petitioner and further ordered the revision petitioner to furnish security for a sum of Rs.35,95,128/-.

Aggrieved by the said order, the petitioner has come out with this petition.

5. The learned counsel for the revision petitioner submitted that the property sought to be attached is not the property of the petitioner, but it is the ancestral property of his daughter. Therefore, the respondent is not entitled to get attachment of the said property. She would further submit that, in the impugned order, the Court below had observed that the petitioner is a citizen of Australia and hence there is likelihood of moving out of India. Elaborating the same, she would further submit that the observations made by the Court below may be relevant in a case where the respondent seeks arrest before Judgement.

6. In the affidavit filed in support of petition seeking attachment before Judgement, respondent asserted that from the real estate brokers, he acquired



knowledge that petitioner herein is attempting to sell away the property in order to evade payment due to him. In the counter to ABJ Petition, the petitioner had not denied said assertion made by the respondent.

7. The Revision Petitioner in his counter to ABJ Petition not at all denied his ownership over the property sought to be attached. Therefore, the submission made by the learned counsel as if property sought to be attached belongs to his daughter is not supported by pleadings. The perusal of counter filed by the petitioner would suggest that petitioner only pleaded that he engaged services of respondent to renovate and expand ancestral property of his daughter at Kothamangalam, Karaikal. He admitted that, he engaged respondent and therefore there is a privity of contract between the petitioner and the respondent which is the basis for suit claim. Further, when the petitioner takes up a stand that services of respondent was sought for to renovate ancestral property of his daughter, it is clear, as father he is also having share in the property. Thus, averments in petitioner's counter in ABJ petition would suggest, petitioner is also a Co-owner of the property which was sought to be renovated by engaging services of respondent.

8. In view of the above, this Court finds that there is no infirmity or illegality in the order made in I.A.No.1 of 2021 in O.S.No.1243 of 2021 on the



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file of the XX Additional District and Sessions Judge City Civil Court, Allikulam, Chennai directing the revision petitioner to furnish security for a sum of Rs.35,95,128/-. Accordingly, this Civil Revision Petition is dismissed. Consequently connected miscellaneous petition is closed. No cost.

9. However, the learned counsel for the revision petitioner made a request before this Court that six weeks time may be granted to the revision petitioner for furnishing the security as directed in the order dated 25.07.2022.

10. Therefore, taking into consideration of the facts and circumstances of the case, the time for furnishing security as directed in the order dated 25.07.2022 made in I.A.No.1 of 2021 in O.S.No.1243 of 2021 on the file of the learned XX Additional District and Sessions Judge City Civil Court, Allikulam, Chennai, is extended by six weeks from today.

23.09.2022

Index : Yes/No

Speaking Order : Yes /No

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S.SOUNTHAR,J.

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To:
The learned XX Additional District and Sessions Judge,
City Civil Court, Allikulam, Chennai - 600 003.

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