BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2022**

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A(MD)No.642 of 2022
and
CM.P(MD)No.5512 of 2022

M.Kumar ... Petitioner/Respondent/ Defendant

.Vs.

A.Nallamani ...Respondents/Petitioner// Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (q) of Civil Procedure Code, against the fair and decreetal order, dated 06.04.2022 made in I.A.No.136/2021, in O.S.No.82/2021, on the file of the VI Additional District Judge, Madurai.

For Appellant : Mr.PT.S.Narendravasan

JUDGMENT
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This Civil Miscellaneous Appeal has been filed against the order passed in I.A.No.136 of 2021 in O.S.No.82 of 2021 by the VI Additional District Judge, Madurai. The appellant is the defendant in the suit. The respondent filed a suit for recovery of money and in which, the respondent has filed an interlocutory application in I.A.No.136 of 2021. Though initially the trial Court has passed an order in I.A.No.136 of 2021 under Order 38 Rule 5 directed the petitioner to furnish the security, whereas, the petitioner failed to furnish the security and has not complied with order of the trial Court. Therefore, subsequently, an order of attachment was passed on 06.04.2022. Challenging the same, present appeal has been filed.

2. The appellant has admitted the signature of the suit promissory note, however, he denied the execution. The appellant said to have executed the signed unfilled promissory note and handed over to the third party and the same was utilised by the respondent and at the instigation of the third party, the respondent filed the present suit. Since the appellant has denied the execution and the order of the attachment passed by the Court below is not correct and it is liable to be dismissed.

3. Heard the learned counsel appearing for the appellant and perused the materials available on record.

4. Admittedly, the respondent filed a suit in O.S.No.82 of 2021 for recovery of money, in which, the respondent filed an application under Order 38 Rule-5 and Section 151 of Civil Procedure Code for order of attachment. Though, initially, the trial Court directed the appellant to furnish the security the appellant did not comply with the order of the trial Court, the trial Court passed order or attachment. However, the appellant has not established his defence as taken in the written statement and denied the borrowal of money from the respondent and there is no contract between the appellant and the respondent and hence, the petitioner is not liable to pay the said money. All can decide after trial. Now, prima facie, the appellant has not denied the signature made in the promissory note and therefore, the trial Court has rightly passed an order or attachment and there is no perversity in the order of the trial Court. Therefore, there is no ground to admit the Civil Miscellaneous Appeal and hence, the appeal is dismissed at the admission stage itself.

5. However, the suit is of the year 2021 and pleadings also completed and written statement also filed. The suit is pending at the stage of framing issues. Considering the facts and circumstances of the

case and also considering the fact that this is the money suit and only sole plaintiff and sole defendant are involved, the petitioner filed a written statement also, the learned VI Additional District Judge, Madurai Court is directed to frame the issues and complete the trial in O.S.No.82 of 2021 within a period of three months and dispose the suit on merits and in accordance with law on or before 30.09.2022. Both parties are directed to extend their co-operation before the trial Court to complete the suit.

6. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

08.07.2022

Index:Yes
Internet:Yes

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To

1. The VI Additional District Judge, Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

<u>P.VELMURUGAN,J.</u>

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<u>C.M.A(MD)No.642 of 2022</u>

08.07.2022