



C.M.A(MD)No.636 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.12.2022

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.636 of 2022

and

C.M.P(MD)No.5461 of 2022

Stalin Golden Amalraj

... Appellant/ Petitioner/
Defendant.

Vs

Ramadas

...Respondent/Petitioner/
Plaintiff

PRAYER :-

This Civil Miscellaneous Appeal is filed under order 43 and Rule (1) (q) of Civil Procedure Code to set aside the order, dated 29.04.2022 in I.A.No. 1 of 2020 in O.S.No.152 of 2020 on the file of the Additional District Court (FTC), Tenkasi.

For Appellant : Mr.S.Vishnuvardhan

For Respondent : Mr.K.Sankar

JUDGMENT

This Civil Miscellaneous Appeal is filed against order, dated 29.04.2022 passed in I.A.No.1 of 2020 in O.S.No.152 of 2020 on the file of the Additional District Court (FTC), Tenkasi.



2. The case of the plaintiff/respondent was that the appellant/defendant had obtained a hand loan of Rs.15,00,000/- from him and executed a promissory note for the hand loan on 01.11.2019. The respondent was said to have issued a cheque for the loan of Rs.15,00,000/- on 16.02.2020. When the same was deposited on 29.02.2020, it was returned by the Bank with a memo stating that “payment was stopped by drawer”. The respondent/plaintiff therefore filed I.A.No.1 of 2020 in O.S.No.152 of 2020 for attachment of property before judgment under Order 38 and Rules 5 and 6 of Civil Procedure Code.

3. When I.A.No.1 of 2020 was taken up by the lower Court, a cryptic order was passed as follows:

“Heard on the both side of the petitioner. Records perused. From the EC it is established that the respondent is the owner of the Scheduled Property. It is stated by the Petitioners that the respondent is taking steps to dispose the Scheduled Property. Therefore to recover the suit amount it is necessary to Attach the Property. Attach by 13.06.2022.”

4. The learned counsel for the appellant/defendant submits that the order is a non-speaking order and against the provisions of Order 38 Rules 5 and 6 of Civil Procedure Code. Therefore, the learned counsel for the appellant prays to allow the appeal.



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5. The learned counsel for the respondent fairly submits that the matter may be remitted back to the lower Court for fresh consideration.

6. I find force in the submission of the learned counsel for the appellant that procedure contemplated under Order 38 Rules 5 and 6 of CPC has not been followed and therefore, the order in I.A.No.1 of 2020, dated 29.04.2022 is set aside and the matter is remitted back to the Additional District Court (FTC), Tenkasi for fresh consideration in accordance with law. The Additional District Judge (FTC), Tenkasi is directed to dispose of the matter on merits and in accordance with law within a period of six weeks from the date of receipt of copy of this order. This Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.12.2022

Index : Yes / No

Internet : Yes / No

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To

1.The Additional District Court (FTC), Tenkasi

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



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N.MALA, J

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