



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

WEB COPY

C.R.P (MD)No.2413 of 2017

and

C.M.P (MD)No.11485 of 2017

Usha

... Petitioner/Petitioner/Plaintiff

Vs.

S.K.Sikkaiyan

... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India as against the fair and decreetal order, dated, 19.08.2016 passed in I.A.No.1 of 2016 in O.S.No.4 of 2016 on the file of the Principal District Court, Theni.

For Petitioner : Mr.R.J.Karthick
for Mr.G.Kandha Vadivelan
For Respondent : Mr.K.Rajeswaran
for Mr.N.Satheesh Kumar

ORDER

The plaintiff in a suit for recovery of money, is the revision petitioner.

2.Pending suit, the plaintiff filed I.A.No.1 of 2016, seeking attachment before judgment of the property. The application was heard along with the suit and the suit was decreed ex-parte on 19.08.2016. On the same day, citing the grounds of decree of the suit, the learned trial Judge has proceeded to close the application for attachment before judgment.

3.However, according to the learned counsel for the plaintiff, the defendant has filed an application to set aside the ex-parte decree and the said application has been allowed. Now, the suit has been restored to file. Under Order 38 Rule 11 of the Code of Civil Procedure, where a property has been attached before judgment, it need not be re-attached in the execution proceedings. The learned Judge, when he has decreed the suit, ought not to have closed the application for attachment before judgment in view of the Order 38 Rule 11 of the Code of Civil Procedure. However, the said application has been erroneously closed. Now, the suit has been restored to file. The plaintiff is at liberty to file an independent application for attachment before judgment under Order 38 Rule 11 of the Code of Civil Procedure. As and when such application is filed, the same may be considered on merits and orders may be passed.



4.With the above said observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal District Court,
Theni.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

Order made in
C.R.P (MD)No.2413 of 2017
08.04.2022

RS (11.05.2022) 2P-4C