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C.M.A.No.1835 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1835 of 2023 and
C.M.P.No.17826 of 2023

M.Karuppasamy

... Appellant

Vs.

R.Sivagiripalanisamy

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(q) R/W Section 104 of C.P.C., 1908, against the Fair and Decretal order dated 21.07.2022 passed in I.A.No.1 of 2020 in O.S.No.419 of 2020 on the file of the I Additional District Court, Tiruppur.

For Appellant	: Ms.Revathi Manivannan
For Respondent	: Mr.K.V.Muthuvisakan

J U D G M E N T

The above appeal has been filed against the order passed in I.A.No.1 of 2020 in O.S.No.419 of 2020 by which the learned I Additional District Court, Tiruppur had ordered attachment of property of the appellant at the instance of the respondent herein.



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2.The respondent filed the said I.A.No.1 of 2020 in O.S.No.419 of 2020 stating that he had lent a sum of Rs.58,20,000/- for which the appellant had executed a pronote; that the appellant is attempting to sell his property and therefore, there was a necessity to attach the same.

3.The appellant herein resisted the said petition stating that he had not borrowed any sum or executed the pronote, that the property sought to be attached was already under mortgage with the Indian Overseas Bank and therefore no attachment order can be passed as prayed for by the respondent herein.

4.The learned Judge after considering the pleadings on either side has observed that the property is liable to be attached and allowed the petition filed by the respondent.

5.The learned counsel for the appellant submitted that an order of attachment cannot be passed on mere asking; that the respondent had not made any prima facie case warranting an order of attachment; and that the learned Judge had not given any reasons for passing an order of attachment and therefore, the order is liable to be set aside.



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6.Learned counsel for the respondent per contra submitted that prima facie case has been made out and the respondent has also filed the pronote executed by the appellant and the order passed by the learned Judge is justified and no interference is called for in the said order.

7.It is seen from the order passed by the learned Judge that the property which is sought to be attached is under mortgage with the Indian Overseas Bank and the said mortgage was created on 05.01.2021. It is also seen that there is no discussion in the order passed by the learned Judge as to why an order of attachment has to be passed. It is well settled that an order of attachment cannot be passed on mere asking.

8.The learned counsel for the appellant offered to file an affidavit stating that the appellant would not sell the property that is sought to be attached in the event of the property being redeemed from mortgage. The learned counsel has filed an affidavit undertaking not to alienate the property mentioned in the schedule to the petition for attachment filed by the respondent.



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9.In the light of the above, this Court records the affidavit filed on behalf of the appellant. As per the affidavit, the appellant is directed not to alienate the property pending disposal of the suit. It is also submitted by the learned counsels appearing on either side that the pleadings are complete in the suit. Hence, the Trial Court is directed to expedite the trial, and conclude the trial within a period of six months from the date of receipt of a copy of this order.

10.As stated earlier since the impugned order has been passed without assigning any valid reasons, it is liable to be set aside and hence set aside.

11.With the above observations, the appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

12.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
gvn/pam

Note:Issue order copy on or before 14.09.2023



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To
The I Additional District Court, Tiruppur.



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SUNDER MOHAN, J.

gvn

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