



CRP No. 711 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

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THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No. 711 of 2023
and
C.M.P. No.5525 of 2023

G. Sandeep Kumar

.. Petitioner

Versus

M. Meena

.. Respondent

Civil Revision Petition filed under Art. 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 08.02.2023 passed in I.A.No.1 of 2021 in O.S.No.3440 of 2021 on the file of the XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai-600 003.

For Petitioner : Mr. T. Gunasekar
For Respondent : Mrs. Thenmozhi Shivaperumal

ORDER

The petitioner is the plaintiff, who has filed the suit in O.S. 3440 of 2021 against the respondent/defendant for recovery of money.

2. The plaintiff has instituted the suit by contending that he is running a jewellery shop at Arcot road, Virugambakkam, Chennai-92 and the defendant is one of the customers of his shop and she used to come to the shop



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for purchasing the jewels or to exchange old ornaments. The plaintiff further stated that the defendant claimed herself to be an actress in cine field and she also introduced several persons as producers of cinemas. Further, the defendant also stated that her husband is also in the cinema field. Having regard to such proximity, during January 2015, the defendant requested the plaintiff to pay a sum of Rs.25 lakhs to complete a short film. On such request, the plaintiff arranged and paid a sum of Rs.5 lakhs to the defendant on 12.03.2015 and on receipt of the same, the defendant also executed a promisory note promising to repay the amount with interest at the rate of 24% per annum. Subsequently, on 06.04.2015, the defendant borrowed another sum of Rs.10 lakhs and thereafter on 04.05.2015 borrowed another sum of Rs.10 lakhs. Thus, totally, the defendant borrowed a sum of Rs.25 lakhs, however, the defendant failed and neglected to pay the amount. After repeated demands, the defendant paid Rs.2,75,000/- on 08.10.2015, leaving the balance amount unpaid. Therefore, on 03.09.2016, the plaintiff sent a notice calling upon the defendant to pay the balance amount to the tune of Rs.30,53,999.50 together with interest. But the defendant failed to repay the amount, hence, the suit in C.S. No. 731 of 2016 was filed before this Court along with an application for attachment before judgment. This Court, by an order dated 09.06.2017 passed in Application No. 5147 of 2016 in C.S. No. 731 of 2016



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passed an order attaching the properties of the defendant, before judgment.

Subsequently, during the pendency of the suit, due to enhancement of pecuniary jurisdiction, the suit in O.S. No. 731 of 2016 stood transferred and re-numbered as O.S. No. 3440 of 2021. Subsequently, the suit once again stood transferred to the file of learned XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai - 600 003.

3. In order to raise the order of attachment, the defendant has filed I.A. No. 1 of 2021 in O.S. No. 3440 of 2021. The application was opposed by the plaintiff stating that inspite of repeated demands, the defendant did not repay the loan amount and therefore, the attachment already made need not be raised. It was also contended that in both the suit as well as in the application for attachment, the defendant was called absent and set exparte. Therefore, EP No. 184 of 2018 was filed to execute the decree and at this stage, the present application to raise the order of attachment was filed.

4. The court below has concluded that to set aside the exparte decree, the defendant had already filed an application and the application was allowed upon payment of cost of Rs.10,000/- on 13.03.2020. When once the exparte order is set aside, the order of attachment also ought to have been



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raised. Therefore, the trial court allowed the application and raised the order of attachment. Aggrieved by the said order dated 08.02.2023, the present Civil Revision Petition is filed by the plaintiff.

5. The learned counsel for the plaintiff argued that without furnishing any security to the suit claim, the application filed by the defendant to raise the order of attachment is not maintainable. The suit was originally filed in the year 2016 in which, after notice, the defendant was set exparte. When execution petition was filed, the application to set aside the exparte decree was filed and it was allowed. In any event, in a suit of this nature for recovery of money, the defendant is not entitled to get the order of attachment raised without offering any other immovable property as security. The learned counsel for the revision petitioner therefore prayed for allowing this Civil Revision Petition.

6. Per contra, the learned counsel for the defendant/respondent submits that based on the ex-parte order, the property was attached. Subsequently, the ex-parte decree was set aside and consequently, the order of attachment has been rightly raised.



7. Heard the counsel for both sides and perused the materials on record. The suit was instituted by the plaintiff for recovery of Rs.30,53,99.50 with further interest. The suit was filed based on promissory notes executed by the defendant. In the suit, notice was sent to the defendant, but she did not appear or contested the suit. With the result, an exparte decree was passed and to execute it, the plaintiff has also filed EP No. 184 of 2018. It is needless to mention that the suit itself was filed after the plaintiff sent a pre-suit notice dated 03.09.2016 as could be seen from the plaint. Therefore, the defendant, in all fairness, would have been aware of the demand made by the plaintiff and the attempt to initiate legal proceedings to recover the money. However, only in the year 2020, the defendant filed Application No. 778 of 2020 to set aside the exparte decree with delay and it was allowed on 16.03.2020 with costs of Rs.10,000/-. On the basis of the order dated 16.03.2020, the Execution Petition was also terminated. In such circumstances, grave hardship will be occasioned to the plaintiff, if the order of attachment is also raised. Though the exparte decree is set aside, automatically, the order of attachment need not be raised. Even in the application seeking to raise the order of attachment, there is no whisper made by the defendant as to any amount paid by her to fulfill her obligations. The affidavit dated 04.09.2020 for raising the order of attachment is silent. In any event, if the order of attachment continued, this



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Court is of the view that no prejudice will be caused to the defendant. On the other hand, raising the order of attachment will only cause prejudice to the plaintiff, especially when the suit was instituted in the year 2016 for recovery of Rs.30,53,999.50. In such circumstances, interest of justice would be met only if the order of attachment continues so that the interest of the plaintiff/lender could be protected. The trial court, without considering this legal aspect has passed the order raising the attachment, which is totally unfair and the same is liable to be set aside.

8. In the result, the order 08.02.2023 passed in I.A. No. 1 of 2021 in O.S. No. 3440 of 2021 on the file of the XX Additional District and Sessions Judge, City Civil Court, Allikulam, Chennai-600 003 is set aside. The Civil Revision Petition is allowed. The order of attachment dated 09.06.2017 passed in Application No. 5147 of 2016 in C.S. No. 731 of 2016 is restored till the disposal of the suit. No costs.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To
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The XX Additional District and Session Judge,
City Civil Court,
Allikulam,
Chennai.



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T.V.THAMILSELVI, J.

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