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CRP.No. 1464 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1464 of 2021

and

CMP.No.11420 of 2021

M.A. Palanisamy

... Petitioner

Versus

S.Vishalakshi

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 29.01.2020 made in I.A.No.2 of 2019 in O.S.No. 161 of 2019 on the file of Principal Subordinate Court, Erode.

For Petitioner : Mr. Saravabhauman Associates
for Mr.S.Mukunth

For Respondent : Mr. C. Prabakaran

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 29.01.2020 made in I.A.No.2 of 2019 in O.S.No. 161 of 2019 on the file of the Principal Subordinate Court, Erode.



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2. The revision petitioner herein is the plaintiff and the respondent herein is the defendant in the suit.

3. Heard the learned counsel for the revision petitioner as well as the learned counsel for the respondent and perused the materials placed on record.

4. On a perusal of the records, it is seen that the revision petitioner/plaintiff has filed the suit in O.S.No. 161 of 2019 before the Principal Subordinate Court, Erode, for directing the defendant to pay a sum of Rs.4,54,340/- due on the promissory note with future interest at the rate of 12% p.a. for Rs.4,00,000/- from the date of plaint till the date of realization. The defendant has contested the suit by filing written statement and denied all the averments made in the plaint. Pending the suit, the revision petitioner/plaintiff has filed I.A.No.2 of 2019 under Order 38 Rules 5 and 6 and under Section 151 of CPC., seeking to attach the petition mentioned property. After perusing the records, the Court below dismissed the application by order dated 29.01.2020. Aggrieved by the same, the present Civil Revision Petition is filed by the



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petitioner/plaintiff.

5. The contention of the revision petitioner/plaintiff is that he has filed the suit for recovery of money against the respondent/defendant seeking a sum of Rs.4,54,400/-, but the respondent has not paid. On 21.01.2019, the plaintiff has issued a legal notice through his counsel demanding the due and on receipt of the notice, the defendant neither gave reply, nor paid any amount. The petition mentioned properties absolutely belongs to the respondent. So, the respondent/defendant, with an intention to delay the realization of the amount to the revision petitioner/plaintiff is trying to sell the properties to one E.Periyasamy. Therefore, the learned counsel prays to set aside the findings of the Court below.

6. The contention of the respondent/defendant is that she denied the execution of the promissory note as stated by the revision petitioner/plaintiff. The respondent also prefers to send the promissory note for handwriting expert's opinion. The properties in the petition were mentioned as under-valued and therefore, she prays to dismiss the above Civil Revision Petition.



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7. On a further perusal of the impugned order passed by the Court below, it reveals that Order 38 Rule 5 CPC can be issued, only if circumstances exist as stated therein, to the satisfaction of the Court. The Court would not be justified in issuing an order for attachment before judgment or for security, merely because it thinks that no harm would be done, thereby the defendants would not be prejudiced. The affidavit in support of the contentions of the applicant should not be vague and it must be properly verified. Where it is affirmed true to knowledge or information, it must be stated as to which portion is true to knowledge and the source of information should be disclosed and the grounds for belief should be stated. A mere allegation that the defendant is selling off his properties, is not sufficient and particulars must be stated. An order of attachment before judgment is a drastic remedy and the power is exercised. As the Court must act with the utmost circumspection before issuing an order of attachment, the affidavit filed by the applicant should clearly establish that the defendant, with an intent to obstruct or delay the execution of the decree, that may be passed against him which is about to dispose of the whole, nay part of his property. A mere mechanical repetition of the provisions in the Code of Civil Procedure or the language



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therein without any basic strata of truth underlying the allegation or vague and general allegations that the defendant is about to dispose of the property or to remove it beyond the jurisdiction of the Court, is totally unsupported by particulars, which would not be sufficient compliance of Order 38 Rule 5 CPC. An attachment before judgment is not a process to be adopted as a matter of course. The suit is yet to be tried and the defence of the defendant is yet to be tested. At the nebulous juncture, the relief which is extraordinary, could be granted only if the conditions for its grant, as per the provisions of the CPC, stand satisfied. This process is never meant as a lever for the plaintiff to coerce the defendant to come to terms. Hence, utmost caution and circumspection should guide the Court.

8. Further, it is for the petitioner to *prima facie* establish that the respondent has been taking hectic steps to sell the property and the same has to be put forth by the petitioner/plaintiff. Further, the respondent/defendant has also denied the execution. If the petitioner believes that the respondent is trying to alienate the property and the same has to be established from the source from which the petitioner has received the information. The petitioner in his report filed affidavit of one



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C.Panneerselvam who has given information to the petitioner/plaintiff in this regard. But the execution of the promissory note is denied by the respondent.

9. However, taking into consideration the nature of the suit filed by the revision petitioner/plaintiff for recovery of money which is of the year 2019, this Court does not interfere with the order passed by the Court below. Hence, this Court directs the Court below to dispose of the suit preferably within a period of six months from the date of receipt of a copy of this order.

10. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

24.01.2023

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To

1. The Principal Subordinate Court, Erode.
2. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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