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CRP No. 2611 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Revision Petition No. 2611 of 2023
and
CMP No. 16100 of 2023

R.Yogeshkannan

.. Petitioner

Versus

N.Thiyagu

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order dated 22.06.2023 passed in I.A.No.2 of 2023 in O.S.No.49 of 2023 on the file of the District Judge No.II, Kancheepuram.

For Petitioner

: Mr. V. Manoharan

ORDER

This Civil Revision Petition has been filed against the docket order dated 22.06.2023 passed in I.A.No.2 of 2023 in O.S.No.49 of 2023 on the file of the District Judge No.II, Kancheepuram, whereby, the order of attachment passed by the Court below on 28.02.2023, pending suit, has been *suo motu* raised on 22.06.2023, at the instance of the respondent-defendant.



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2. The revision petitioner is the plaintiff in O.S. No. 49 of 2023. He has instituted the aforesaid suit for recovery of a sum of Rs.24.40,000/- with interest at the rate of 24% per annum on Rs.20,00,000/- from the date of plaint till realisation.

3. According to the plaintiff, the defendant/respondent herein is known to his wife for about five years. It is stated that the plaintiff had availed a loan of Rs.20 lakhs from a financial institution, but he could not use the loan amount for the purpose for which he availed. At this stage, the defendant, in order to develop his property, has sought for a loan of Rs.20 lakhs and at the request of the wife of the plaintiff, he paid the sum of Rs.20 lakhs with him to the defendant. That apart, the plaintiff also paid various other amount to the tune of Rs.50 lakhs and all the amount have been sent by online transfer. It is stated that the plaintiff, for having received the amount executed two promisory notes on 26.03.2022 for Rs.30 lakhs and Rs.20 lakhs respectively. Subsequently, on various dates, the defendant repaid Rs.30 lakhs and therefore one promisory note was returned to him. As far as the balance sum of Rs.20 lakhs covered under the promisory note dated 26.03.2022, the defendant evaded and avoided to repay the same. The plaintiff therefore was constrained



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to cause a notice dated 11.02.2023 to his known addresses, but the postal envelopes sent were returned with an endorsement "left" and "addressee moved". In such circumstances, the plaintiff has filed the suit for recovery of money.

4. Pending suit, the plaintiff has filed an application in I.A. No. 2 of 2023 in O.S. No. 49 of 2023 praying to pass an ad-interim order of attachment of the property of the respondent-defendant, morefully set out in the schedule of the petition. The trial court, taking note of the fact that the property mentioned in the petition in I.A. No. 2 of 2023 has already been mortgaged and there is every chance to alienate or encumber it, passed an order dated 28.02.2023 attaching the said property while ordering notice to the respondent. On receipt of the notice, the respondent prayed for setting aside the order of attachment on the ground that the order dated 28.02.2023 is not in accordance with Order 38 Rule 5 of CPC. On the basis of such plea of the respondent-defendant, the trial court passed the order dated 22.06.2023 stating that the earlier order dated 28.02.2023, attaching the property of the respondent-defendant is not in accordance with Order 38 Rule 5, hence, *suo motu* raised the order of attachment. Aggrieved by the order dated 22.06.2023, the revision petitioner is before this Court, with this Civil Revision Petition.



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5. The learned counsel for the petitioner would vehemently contend that without giving any opportunity to the plaintiff/revision petitioner, the trial court, on a mere plea by the respondent-defendant, raised the order of attachment dated 28.02.2023. The trial court did not take note of the fact that the order dated 28.02.2023 has been passed after perusing the records and in compliance with Order 38 Rule 5 of CPC in order to safeguard the interest of justice. The court below did not consider that the suit is for recovery of money and if the respondent-defendant alienate the property in I.A. No. 2 of 2023, he will be highly prejudiced and it will be difficult for him to realise the amount even if the suit is decreed. Therefore, the court below ought not to have raised the order of attachment dated 28.02.2023 without giving sufficient opportunity to the revision petitioner-plaintiff.

6. Heard the counsel for the petitioner and perused the records, including the orders dated 28.02.2023 and 22.06.2023 passed by the Court below.

7. It is seen that when the order dated 28.02.2023 was passed, the Court below had taken note of the fact that the property covered in I.A. No. 2



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of 2023 has already been mortgaged and there is every chance for the defendant/ respondent to evade payment of the suit amount. Accordingly, the trial court passed an order of attachment on 28.02.2023. The said order has been passed without hearing the respondent-defendant. However, at the behest of the respondent-defendant, the said order dated 28.02.2023 has been raised on 22.06.2023 without affording sufficient opportunity to the revision petitioner. In such circumstances, this Court is of the view that the order dated 22.06.2023 is in fact is contrary to the provisions of Order 38 Rule 5 of CPC thereby interest of the plaintiff, who filed the suit, has not been protected. It is also seen that the respondent-defendant has not filed any application to raise the order of attachment and the trial court has *suo motu* raised the earlier order dated 28.02.2023. Therefore, this Court is of the view that the order dated 22.06.2023 is set aside. The trial court is directed to issue notice to the respondent-defendant seeking his response as to why the order dated 28.02.2023, attaching the property, shall not continue till the disposal of the suit, within a period of four weeks from the date of receipt of a copy of this order. On the basis of the response of the respondent-defendant as well as the counter affidavit, if any, filed by the revision petitioner-plaintiff, the trial court shall decide as to whether the order dated 08.02.2023 shall be continued or it is required to be raised, in the interest of justice.



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WEB COPY 8. Accordingly, the Civil Revision Petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

The District Judge No.II, Kancheepuram.



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V. BHAVANI SUBBAROYAN, J

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