



C.R.P. Nos. 3583 & 3585 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM:

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

C.R.P.Nos. 3583 & 3585 of 2023

and

C.M.P.Nos. 22431 & 22436 of 2023

Rekha Surana

... Petitioner

Vs.

1. Najmuddin and Sons
rep. by its partners
Mr.Shrin Dhankot,
Mrs. Fathima Inayat Bharmal
and Mr.Inayat Najmuddi Bharmal

2. Shirin Dhankot
3. Fathima Iniyat Bharmal
4. Inayat Najmuddin Bharmal

... Respondents

PRAYER in C.R.P.No. 3583 of 2023 : Civil Revision Petition filed under

Art. 227 of Constitution of India, praying to set aside the order dated 07.06.2023 made in I.A.No.1 of 2022 in O.S.No. 3715 of 2021 on the file of XX Addl. City Civil Court, Allikulam, Chennai.



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PRAYER in C.R.P.No. 3585 of 2023 : Civil Revision Petition filed under

Art. 227 of Constitution of India, praying to set aside the order dated 07.06.2023 made in I.A.No.1 of 2022 in O.S.No. 3713 of 2021 on the file of XX Addl. City Civil Court, Allikulam, Chennai.

For Petitioner : Mr.S.Thanka Sivan

COMMON ORDER

Challenging the impugned orders passed in I.A.Nos.1 and 1 of 2022 in O.S.Nos. 3715 and 3713 of 2021 dated 07.06.2023 passed by XX Addl. Judge, City Civil Court, Allikulam, Chennai, respectively the present Civil Revision Petitions have been filed.

2. The learned counsel for Revision Petitioner would submit that the 1st defendant partnership firm along with partners borrowed a loan of Rs.50,00,000/-, for which they have executed a promissory note as well as an undertaking letter signed by the 4th defendant to repay the same. Based on that, the plaintiff filed two suits for recovery of money against them and for attachment of property, the plaintiff also filed Interlocutory Applications in I.A.Nos.1 and 1 of 2022 respectively in both suits and the said applications were contested by the defendants stating that the property is not



belong to the firm and it is an individual property. Hence, it cannot be attached. Considering both side submissions, the trial judge dismissed the applications holding that the plaintiff prima facie not filed any proof to show that the 4th defendant is one of the partner of partnership firm and also not established that the property belongs to the firm. Accordingly, the applications for attachment were dismissed.

3. The learned counsel for Revision Petitioner by relying the letterpad under the headline of NS Najmuddin & Sons, would further submit that through which, they gave the property viz., VNS Apartment, Flat No.D8, Alwarpet, Chennai, which was sought to be attached before the trial court was given by them with an undertaking letter dated 10.02.2017 signed by the 4th defendant for NS Najmuddin & Sons as a partner, but that letter was not produced before the trial court. So, he prayed to remand the matters in order to submit the valuable document to prove his claim.

4. The xerox copy of letter dated 10.02.2017 is perused and prima facie, it reveals that for NS Najmuddin & Sons, as a partner, one of the person said to be forced to sign in the document, but admittedly, the said letter was not produced before the trial court while arguing the applications



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in I.A.Nos. 1 and 1 of 2022. Furthermore, if opportunity was not given to the plaintiff to prove his case and if the property is not alienated in favour of plaintiff, he would not able to realise the suit claim, thereby his valuable right to defend his case will be defeated. Therefore, considering the submissions of learned counsel for Revision Petitioner as well as document relied on by the plaintiff, it is just and necessary, a reasonable opportunity is to be given to the plaintiff. Accordingly, these Civil Revision Petitions are allowed and the findings of the learned trial judge in I.A.Nos.1 and 1 of 2022 in O.S.Nos. 3715 & 3713 of 2021 are set aside and remanded the said Interlocutory Applications back to the trial court for fresh disposal. Both parties are directed to adduce their available evidence and based on that, the trial judge is directed to dispose the said Interlocutory Applications without influence of the findings of this court as early as possible. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

03.10.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
XX Addl. Judge, City Civil Court, Chennai.

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T.V.THAMILSELVI, J.

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