



C.R.P(MD).No.139 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.139 of 2021

and

C.M.P(MD).No.861 of 2021

P.Govindhasamy

... Petitioner/Respondent/Defendant

Vs.

V.Ramasamy

... Respondent/Petitioner/Plaintiff

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records of the learned District Court, Karur, made in I.A.No.1 of 2020 in O.S.No.216 of 2020 and set aside the fair and decretal order dated 14.12.2020.

For petitioner : Mr.S.Pon Senthilkumaran

For Respondent : No appearance

ORDER

There is no representation on behalf of the respondent/plaintiff.

2. The petitioner is the defendant in O.S.No.216 of 2020 on the file of the District Court, Karur. The respondent has filed the above suit to recover



a sum of Rs.19,17,750/-(Rupees Nineteen Lakh Seventeen Thousand Seven Hundred and Fifty only) from the petitioner. In the said proceedings, the respondent also filed an application under Order 38 Rule 5 of the Code of Civil Procedure to attach the schedule mentioned property of the petition before judgment.

3. Before the trial Court, it was specifically argued by the petitioner/defendant that the schedule mentioned property have already been mortgaged to IDBI Bank and TMB Bank. The petitioner/defendant further contended that the order of attachment has been made without giving sufficient opportunity to the defendant to furnish security within the time fixed by the Court under Order 38 Rule 5(1) of the Code of Civil Procedure. It is also submitted that unless the petitioner/defendant was called upon to furnish security, the question of attaching the property would not arise.

4. The learned counsel for the petitioner therefore submits that the matter may be remanded back to the lower Court to allow the petition to furnish an alternate security. It is also submitted that the petitioner is willing to furnish alternate security in the form of immovable property to secure the interest of the respondent/plaintiff.



5. The learned counsel for the petitioner has placed the follow reliance for consideration:

(i) Raman Tech and Process Engg.Co.and Ors Vs., Solanki Traders

(ii) S.K.Kaleeswaren Vs., A.Gopalan and another

6. I have perused the impugned fair and decretal order dated 14.12.2020 in I.A.No.1 of 2020 in O.S.No.216 of 2020. The relevant portion of the impugned order reads as follows:

“7.....He has merely denied the borrowal and execution of the promissory note. It is also fact that he has already mortgaged their property with IDBI and Tamil Nadu Mercantile Bank. There is no specific denial or specific case put forth by the respondent, and the petitioner is having prima facie case in his favour. Further, the petitioner has stated that the respondent is trying to alienate the property. He has also filed a third party affidavit in support of his contention. Considering all these aspects, in order to protect the interest of the petitioner, attachment order has to be passed. But, the property was already encumbered by way of mortgage with two banks. So, the present attachment will be subject to the earlier mortgage of the property. “

7. Reading of the above indicates that the trial Court has not called upon the petitioner to furnish the security before ordering attached of the



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property. Admittedly, property in question is mortgaged in favour of TMB and IDBI for the loan borrowed by the petitioner/defendant. In these circumstances, I am inclined to interfere by remitting the case back to the trial Court to permit the petitioner to furnish any other alternate security in the place of the attached properties. The petitioner shall furnish an alternate security to secure the interest of the respondent/plaintiff within a period of 30 days from the date of receipt of a copy of this order. On such security being furnished by the petitioner, the order of attachment passed by the trial Court on 14.12.2020 in I.A.No.1 of 2020 shall stand raised subject to the Trial Court being satisfied that the new property offered as a security will sufficiently protect the interest of the respondent/plaintiff and the decree to be passed.

8. With the above observation, the Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

23.03.2023

NCC : Yes/No

Index : Yes/No

Rmk



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To

WEB COPY

- 1.The District Judge, Karur.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

Rmk

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