



C.R.P(MD)No.178 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.178 of 2023

and

C.M.P(MD)No.853 of 2023

Ananthakrishnan

...Petitioner/Petitioner/
Plaintiff

Vs.

Vijaykumar

...Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.304 of 2022 in O.S.No.242 of 2022 dated 09.12.2022 on the file of the Additional Sub Court, Palani.

For Petitioner : Mr.S.C.Herold Singh

ORDER

The present Civil Revision Petition has been filed against the order passed in I.A.No.304 of 2022 in O.S.No.242 of 2022, dated 09.12.2022 on the file of the Additional Sub Court, Palani.



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2. The petitioner is the plaintiff in O.S.No.242 of 2022 before the Additional Sub Court, Palani. The suit is filed to recover the amount of Rs.5,66,000/- allegedly due from the respondent on a promissory note executed for a sum of Rs.5,00,000/- on 06.06.2021.

3. It is the case of the petitioner that the respondent failed to honour the amount when the demand was made by the petitioner. Therefore, the petitioner issued a pre-suit notice on 16.05.2022. Since the respondent failed to respond, the petitioner filed the above suit on 13.07.2022 before the Additional Sub Court, Palani. It is submitted that in the suit, the respondent entered appearance, however, failed to file a written statement.

4. In the suit, the petitioner had also filed an application in I.A.No. 304 of 2022 for attachment of the property of the respondent under Order 38 Rule 5 of C.P.C., which has been dismissed by the learned Additional Sub Judge, Palani vide impugned order, dated 09.12.2022. It is submitted that the Court has committed a grave error in rejecting the application merely on the ground that the property is located outside the



jurisdiction of the Court. Therefore, the petitioner should work out remedy in a manner known to law.

5. I have considered the arguments advanced by the learned counsel for the petitioner.

6. I have also perused the plaint and impugned order. Section 136 of C.P.C., prescribe a procedure for the eventuality. It reads as under:

136. Procedure where person to be arrested or property to be attached is outside district.—

(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue, a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the later Court,



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or unless he furnishes sufficient security for his appearance before the later Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

*(4) Where a person to be arrested or movable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, 1*** the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras 2 [or Bombay], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.*

7. The Court has the option to order the arrest of the person or order of attachment of the property which is outside the jurisdiction of the Court.

8. In the light of the above, the impugned order passed by the learned Additional Sub Judge, Palani on 09.12.2022 in I.A.No.304 of 2022 in O.S.No.242 of 2022 is liable to be set aside. Accordingly, it is set aside and the case remanded back to the Additional Sub Court, Palani to pass a fresh order in the light of the Section 136 of C.P.C. The petitioner is at liberty to make appropriate submissions before the learned Additional Sub Judge, Palani. The Additional Sub Court, Palani shall endeavour to dispose I.A.No.304 of 2022 denovo within a period of two weeks from the date of receipt of copy of this order.



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8. The present Civil Revision Petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Additional sub Court,
Palani.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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