



C.R.P(MD).No.1080of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1080 of 2023

and

C.M.P(MD).No.5050 of 2023

C.Wilson Gnanadoss ... Petitioner/Respondent/1st Defendant
Vs.

The Branch Manager/Authorised Officer,
Tamilnadu Mercantile Bank Ltd,
Tirunelveli Branch, No.20/15 and 16, I Floor,
Swamy Nellaiappar High Court,
Tirunelveli Junction, Tirunelveli District.

...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 impugned order passed by the Learned Principal District Judge, Tirunelveli in IA.No.2 of 2022 in O.S. No. 427 of 2022 dated 31.03.2023 and set-aside the same.

For petitioner : Mr.Abul Kalam Azad.A.S
for Spicy Law Firm
For Respondent : Mr.N.Dilip Kumar

ORDER

This Civil Revision Petition has been filed to set aside the impugned order passed by the Learned Principal District Judge, Tirunelveli, in IA No.2 of 2022 in O.S. No. 427 of 2022 dated 31.03.2023.

2.The petitioner is the defendant before the Principal District Judge, Tirunelveli in O.S.No.427 of 2022. The suit has been filed by the respondent



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for recover a sum of Rs.11,87,595.18. In the said suit, the respondent filed I.A.No.2 of 2022 under Order XXXVIII Rule 4 of CPC to direct the petitioner to furnish security for a sum of Rs.11,87,595.18. In the said proceedings, the petitioner had filed an affidavit to deposit a sum of Rs.3,50,000/- to the credit of the suit and gave an undertaking that the petitioner would not abscond from the jurisdiction of the Court and not defeat the rights of the respondent. By the impugned order, the Court has directed the petitioner to furnish surety for 50% of the suit amount i.e., Rs.5,93,798/-. It is submitted that the Trial Court committed a grave error in directing the petitioner to furnish surety for 50% of the suit amount on or before 22.02.2023. Aggrieved by the same, present Civil Revision Petition has been filed by the petitioner.

3.The learned counsel for the petitioner submits that the procedure adopted by the learned Principal District Judge, Tirunelveli while passing the impugned order dated 31.01.2023 in I.A.No.2 of 2022 in O.S.No.427 of 2022 is unusual and contrary to the well settled decision of the Hon'ble Supreme Court in **Raman Tech. & Process Engg. Co. & Another Vs. Solanki Traders** reported in **2008 (2) SCC 302**. A reference is made to paragraphs 5 and 6 which read as under:-



“5.The power under Order 38 Rule 5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert and unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realized by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlement, under threat of attachment.

6.A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38 Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment.”

4.The learned counsel for the petitioner has placed reliance of a decision of the Kerala High Court in **Anilkumar Vs.Vinodmumar** made in **WP(C)No.20024 of 2010(0) dated 29.06.2010**. A reference is made to paragraph 2 which reads as under:-

“2.No doubt notwithstanding that plaint claim is for W.P(C)No.20024 of 2010 Rs.8,49,200/-, court below has directed security to be furnished only for the admitted sum of Rs.4,82,000/-. But, the order comes under Rule 5 of Order XXXVIII of the Code. In the decisions relied on by learned



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counsel for petitioner it is held that power to order attachment is an extraordinary power and that court has to grant the same with care and caution. Court gets that power when it is satisfied on the materials that conditions requisite for ordering attachment are complied. Satisfaction of the court should be reflected in the order which the court passed. It is stated that before issuing an order of attachment court must be satisfied that "the defendant is about to dispose of whole or any part of his property or to remove whole or any part of his property from the jurisdiction of the court".

5.Per contra, the learned counsel for the respondent submitted that the order passed by the learned Principal District Judge, Tirunelveli, is well reasoned and requires no interference. It is further submitted that the petitioner has not deposited the amount of Rs.3,50,000/-, which was already undertaken to be deposited by the petitioner in terms of affidavit of undertaking dated 09.01.2023. That apart, it is submitted that the petitioner has been directed to furnish surety only for 50% of the suit amount and therefore, no interference is called for.

6.I have considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

7.The power is vested with the Court under Order XXXVII Rule 4 of CPC, to arrest a person and commit such a person to a civil prison when such



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a person fails to comply with the order passed under Rule 2 or 3 of Order XVIII of CPC. In this case, the petitioner has not come forward to deposit a sum of Rs.3,50,000/- within fifteen days despite an affidavit dated 09.01.2023 of the petitioner to that effect. Thus, the petitioner has failed to produce security offered for a sum of Rs.3,50,000/-.

8. In my view, the affidavit filed by the petitioner before the Court has to be considered as a solemn affidavit and therefore it has to be acted upon. Considering the above, I am inclined to dispose the present Civil Revision Petition at the time of admission after hearing the learned counsel for the respondent by directing the petitioner to deposit the amount mentioned in the affidavit of undertaking dated 09.01.2023 within a period of four weeks from the date of receipt of a copy of this order to the credit of O.S.No.427 of 2022.

9. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
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C.SARAVANAN,J.

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To

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

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and

C.M.P(MD).No.5050 of 2023

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