



C.R.P(MD)No.973 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.973 of 2023

and

C.M.P(MD)No.4445 of 2023

M.Padma

... Petitioner/Petitioner/
Respondent

Vs.

P.Thangarasu

...Respondent/Respondent/
Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 05.12.2022 in I.A.No.unnumbered/2022 in I.A.No.1 of 2020 in O.S.No.248 of 2020 on the file of the Additional Subordinate Judge, Karur.

For Petitioner : Mr.V.Nagarajan

ORDER

The Petitioner is aggrieved by the impugned order, dated 05.12.2022 in I.A.No.unnumbered/2022 in I.A.No.1 of 2020 in O.S.No. 248 of 2020 on the file of the Additional Subordinate Judge, Karur. The impugned order of the Additional Subordinate Court, Karur returning the petition reads as under:



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"Already attachment made absolutely on 27.07.2022.
Hence, this petition is returned."

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2. The petitioner is the defendant before the Additional Subordinate Judge, Karur in O.S.No.248 of 2020 filed by the respondent herein. The said suit was filed by the respondent to recover the money alleged advanced to the petitioner, which had remained unpaid. The petitioner was set *ex parte* on 16.02.2021. In the said suit, the respondent had filed I.A.No.1 of 2020 for attachment of the immovable property of the petitioner. The petitioner filed an interlocutory application under Order 9 Rule 7 of C.P.C., to set aside *ex parte* order, dated 12.04.2022 in I.A.No.1 of 2020.

3. It is submitted by the learned counsel for the petitioner that the application under Order 7 Rule 9 of C.P.C., to set aside the order setting the petitioner *ex parte* order dated 16.02.2021 has been wrongly returned. It is submitted that the Trial Court ought to have allowed the interlocutory application filed to set aside the *ex parte* order passed by the Court on 12.04.2022 in I.A.No.1 of 2020 directing the petitioner to furnish security and failure of which the property was attached.



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4. The petitioner was required to file an application for condoning the delay in filing the application for raising the order of attachment apart from filing application to set aside the order setting the petitioner *ex parte* in the suit together with an application to condone the delay in filing the application to set aside the order setting the petitioner *ex parte* in the suit. Without filing such applications, neither the application can be numbered nor order be passed. Therefore, the return although is for incorrect reason does not call for any interference.

5. Under these circumstances, the present Civil Revision Petition stands disposed of by directing the petitioner to file appropriate applications. As long as the petitioner remains *ex parte*, the application filed for raising the order of attachment cannot be numbered. If such applications are filed, the Trial Court pass appropriate order on merits thereafter in accordance with law after due principles of natural justice. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: Registry is directed to return the original impugned order to the learned counsel for the petitioner.

To

- 1.The Additional Subordinate Judge,
Karur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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