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C.R.P(MD).No.1011 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1011 of 2023

and

CMP(MD)No.4751 of 2023

M.R.Ganesh

... Petitioner/Respondent/Defendant

Vs.

S.Balamurugan

... Respondent/Petitioner/Plaintiff

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the Judgement and Decree dated 02.03.2023 passed in I.A. No.128 of 2021 in O.S. No.139 of 2021 on the file of the Additional District (Fast Track) Court, Kumbakonam.

For petitioner : Mr.R.Saravanan

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the Judgement and Decree passed by the Additional District (Fast Track) Court, Kumbakonam, in I.A.No.128 of 2021 in O.S. No.139 of 2021 dated 02.03.2023.

2.The petitioner is the defendant in O.S.No.139 of 2021 before the Additional District (Fact Track Court), Kumbakonam. The suit has been filed



by the respondent herein to recover a sum of Rs.75 lakhs allegedly due from the petitioner herein on account of the promissory note signed by the petitioner. On account of failure of the cheque given in respect of due, the respondent initiated the proceedings under the provision of Negotiable Instrument Act, 1881. Thereafter, the respondent herein filed I.A.No.128 of 2021 in O.S.No.139 of 2021 under Order XXXVIII Rule 5 of CPC to attach the properties.

3.It is submitted that the Trial Court has committed a grave error in granting relief to the respondent is contrary to the law cited by the learned counsel for the petitioner in the case of **Renox Commercials Ltd., Vs. Inventa Technologies Pvt., Ltd.**, reported in **AIR 2000 213**. Especially, reference is made in the paragraphs 28, 29 and 30 of the order which reads as under:-

“ 28.As quoted in the various decisions, the mere bald averment as contained in paragraph 8 of the affidavit that the first defendant is contemplating to alienate the tangible assets of the Company including the goodwill and plant and machinery would not at all be sufficient.

29.In this context, it is relevant to point out that the liability of the loan amount has been denied by the first defendant though it is wrongly stated by the plaintiff/applicant in the affidavit that the debt and liability were admitted and acknowledged by the first defendant/respondent herein. When such being the situation, the applicant/plaintiff has to establish through affidavit, supported by the materials, that at least part of the liabilities are admitted or that the first defendant is about to



dispose of the properties with the mala fide intention to obstruct or delay the execution of the decree that may be passed against him.

30.As indicated above, the applicant/plaintiff should clearly establish two essential requisites. They are:-(i) the defendant is about to dispose of the whole or any part of his property; (ii) that the said disposal is being done with an intention to obstruct or delay the execution of the decree that may be passed against him.”

4.It is submitted that the respondent has not produced any tangible evidence to show that the petitioner is likely to alienate the property so as to defeat the rights of the respondent in the event of the suit is being decreed in O.S.No.139 of 2021. On query, as to what prejudice will be caused to the petitioner by mere attachment of the property, there was no answer.

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

6.In my view, the impugned order does not call for any interference. Admittedly, parallel proceedings are pending against the petitioner under the provisions of Negotiable Instrument Act, 1881. The amount involved in this case is huge and the petitioner has also not come forward to offer any other security. Therefore, the Court was inclined to allow the application filed by



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the respondent under Rule XXXVIII Rule 5 of CPC. The order passed by the Trial Court dated 02.03.2023 does not call for any interference under Article 227 of Constitution of India.

7.It is noticed that the petitioner has also filed written statement in the above suit as earlier as October 2022. The Additional District (Fast Track) Court, Kumbakonam, is directed to frame the issues, record the evidence and dispose the suit as expeditiously as possible preferably within a period of 15 months from the date of receipt of a copy of this orders.

8. This Civil Revision Petition is dismissed with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

17.04.2023

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

1.The Additional District (Fast Track) Court,
Kumbakonam.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.SARAVANAN,J.



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