



C.R.P.(MD).No.1258 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD).No.1258 of 2023

and

C.M.P.(MD).No.6174 of 2023

T.Bala Sundaram

... Petitioner

Vs.

S.Siva

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 18.03.2023 passed in I.A.No.2 of 2022 in O.S.No.247 of 2022, on the file of the Principal Subordinate Judge, Nagercoil.

For Petitioner :Mr.G.Aravinthan

ORDER

This civil revision petition has been filed against the impugned order dated 18.03.2023 by the Principal Subordinate Judge, Nagercoil, has dismissed the I.A.No.2 of 2022 in O.S.No.247 of 2022 filed by the



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petitioner, seeking to attach the property of the respondent. Relevant portion of the impugned order dated 18.03.2023 reads as under:

.....From the above decision it is clear to get the order of attachment before judgment, the plaintiff should prove he has prima facie case and the attempt made by the respondent to remove or dispose his assets with the intention to defeat the decree that may be passed in the suit. Bearing the above decision on mind and applying to the facts of this case. In this case the respondent herein admitted his signature found in the suit cheque. Once the signature of the respondent is admitted, then the petitioner/plaintiff is entitled to the benefits of statutory presumptions under Section 118 and 138 of Negotiable Instruments Act. As per above sections this court may presume that the suit cheque was issued to the petitioner for the consideration mentioned in the cheque and it was issued to discharge the debt incurred by the respondent. Therefore, the petitioner proved that he has prima facie case in his favour. The defence raised by the respondent that the disputed cheque was issued only as a security for the loan amount of Rs.1,00,000/- obtained in the year of 2017 has to be considered only at the time of trial. Therefore the prima facie case is in favour of the petitioner.

8. Now considering whether the petitioner established that the respondent is attempting to dispose the petitioner mentioned property with the intention to defeat the decree that may be passed in this suit? To establish the above fact the



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petitioner not filed any documents. Admittedly the petition mentioned property is belong to the father of the respondent namely Sudalaiyandi through family partition between the brothers and sisters of said Sudalaiyandi. Neither the petitioner nor the respondent filed any document to show whether the said Sudalaiyandi is still alive or not?. The petitioner failed to produce any document to show the respondent taking steps to alienate or encumbrance his share in the petition mentioned property. Except the vague allegations in the affidavit that respondent is making arrangements to sell his 1/2 share over the petition mentioned property to the strangers, no other material produced by the petitioner to establish the attempt made by the respondent to sell away the joint family property. Therefore, the petitioner failed to establish the fact that the respondent in attempting to remove the petition mentioned property with intention to defeat the decree that may be passed in this suit.

9.Though the petitioner has prima facie case in his favour, he failed to prove the attempt made by the respondent to alienate the petition mentioned property. Therefore this Court not inclined to pass an order of attachment before judgment only on the basis of bald allegations mentioned in the affidavit filed along with this petition. This petition deserves to be dismissed.

In the result, this petition is dismissed. No costs.



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2. The petitioner is the plaintiff in O.S.No.247 of 2022 on the file of the Principal Subordinate Court, Nagercoil. The suit has been filed by the petitioner against the defendant/respondent (Sole defendant) to recover a sum of Rs.5,39,275/- being the amount due in respect of a cheque issued for a sum of Rs.5,00,000/- by the respondent, together with interest at 12%.

3. In the said proceedings, the petitioner filed I.A.No.2 of 2022 under Order 38 Rule 51 of Civil Procedure Code, seeking to attach the property inherited by the respondent from his father late Sudalaiyandi. The affidavit filed in I.A.No.2 of 2022 was supplemented with an affidavit of Binil Selva, wherein, the said Binil Selva has deposed that he colluded with the defendant i.e., respondent herein had 1/2 share over the property and that the respondent is attempting to sell 1/2 share from his property.

4. The learned counsel for the petitioner further submitted that even otherwise the petitioner is entitled for a partial decree immediately under Order 12 Rule 6 of Civil Procedure Code.



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5. In view of the admission of the respondent (defendant) that he borrowed a sum of Rs.1,00,000/- from the petitioner, it is submitted that there steps are being taken by the respondent to defeat the rights of the petitioner.

6. Heard the learned counsel for the petitioner.

7. Once the cheque is issued, *prima facie* there is a presumption under Section 118 of the Negotiable Instruments Act, 1881, operates against the respondent. No doubt, the petitioner has filed an affidavit of the said Binil Selva. However, there are no reasons given in the said affidavit. A self serving affidavit of a person claiming to know both the petitioner and the respondent is not sufficient for the Court to order attachment before Judgment. The petitioner has also not produced any of the documents to substantiate that the respondent (defendant) was attempting to alienate out of the asset to defeat the rights of the petitioner (plaintiff).



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8. Under such circumstances, I do not find any infirmity to warrant interference in the impugned order dated 18.03.2023, passed in I.A.No.2 of 2022. At the same time, liberty is given to the petitioner to file an appropriate application under Order 12 Rule 6 of Civil Procedure Code for a judgment and decree for admission. Liberty is also given to file a fresh application, in case the petitioner has any other documents or evidence or confirmed information to substantiate that the respondent intends to alienate the asset with a view to defeat the rights of the petitioner.

9. With the above said observations, this civil revision petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC :Yes / No

Index :Yes / No

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