



C.R.P(MD)No.1350 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1350 of 2023

and

CMP(MD)No.6722 of 2023

M.Karthic Prabu

...Petitioner/Respondent/Defendant

Vs.

S.Dhanapackiyam

... Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition is filed under Under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.02.2023 made in I.A.No.257 of 2022 in O.S.No.405 of 2022 on the file of the I Additional District Judge, Madurai.

For Petitioner : Mr.J.Parekhkumar

ORDER

This petition has been filed to set aside the fair and decreetal order passed by the I Additional District Judge, Madurai, in I.A.No.257 of 2022 in O.S.No.405 of 2022, dated 14.02.2023.



C.R.P(MD)No.1350 of 2023

2. The petitioner is the defendant before the I Additional District Court at Madurai. The petitioner is aggrieved by the impugned order dated 14.02.2023, passed by the I Additional District Court at Madurai, in I.A.No.257 of 2022 in O.S.No.405 of 2022 filed by the respondent/plaintiff. The impugned order has been passed under Order XXXVIII Rule 5 & 6 of CPC.

3.The specific case of the petitioner is that the impugned order passed is contrary to Order XXXVII Rule 5 & 6 of CPC. In as such, before ordering attachment, the mandatory requirements of calling the petitioner for furnishing security, has not been complied with. Therefore, the property cannot be attached. The learned counsel for the petitioner further submits that the subject property has been mortgaged for a housing loan with Chozhamandalam Finance Company, Kochadai, Madurai, and therefore, even on this count also, the property cannot be attached.

4.That apart, on merit, the learned counsel for the petitioner submits that the petitioner had a loan transaction with the respondent's husband namely, P.Seetharaman for a sum of Rs.1 lakh. Which loan



C.R.P(MD)No.1350 of 2023

was discharged long time back. However, signature was obtained in a blank promissory note, which was filled up by the respondent as the petitioner had borrowed a sum of Rs.11 lakhs from the respondent herein. There is no merits in the suit itself. Hence, the suit is liable to be dismissed.

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

6.There is no merits in the submission of the learned counsel for the petitioner as the impugned order has not followed the mandatory requirements under Order XXXVIII Rule 5 & 6 of CPC. However, merely attaching a immovable property which is a residential property of the petitioner, no prejudice or harm will be caused to the petitioner. As admittedly, according to the petitioner, the property was mortgaged infavour of the finance Company namely, the Chozhamandalam Finance Company, Kochadai, Madurai, from whom the petitioner has taken a housing loan.



C.R.P(MD)No.1350 of 2023

7.Although, the mandatory requirement of issuing notice calling upon the petitioner to furnish security has not been complied, even today the petitioner is not ready to furnish any security for the amount allegedly honoured by the petitioner.

8.By entertaining the present Civil Revision Petition, the time disposal of the suit will be forth delayed. The petitioner has filed this Civil Revision Petition, only to delay the proceedings even though no prejudice will be caused to the petitioner as even according to the petitioner the property has been mortgaged with Chozhamandalam Finance Company, Kochadai, Madurai.

9.Considering the above, I find no reason to entertain this Civil Revision Petition. It is therefore liable to be dismissed. However, there shall be a direction to the I Additional District Court, Madurai, to dispose of O.S.No.405 of 2022 as expeditiously as possible preferably within a period of 9 months from the date of receipt of a copy of this order.

10.It is made clear that all the issues relating to the impugned attachment is left open to be canvassed by the petitioner in execution proceedings should the respondent succeed in the suit.



C.R.P(MD)No.1350 of 2023

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11. With the above direction, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

No costs.

12.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
dss

To

1. The I Additional District Court,
Madurai.

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



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C.R.P(MD)No.1350 of 2023

C.SARAVANAN,J.

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C.R.P(MD)No.1350 of 2023
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