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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1763 of 2023

and

C.M.P(MD)No.8810 of 2023

1.JMRC Fuel Service,
Represented through its proprietor
Mrs.Baby Kousalya
Serndhamaran Road,
Veerasigamani,
Sankarankovil Taluk,
Tenkasi District-627757

2.Mrs.Baby Kousalya

... Petitioners/Respondents1 &2
Defendants 1&2

Vs.

1.State Bank of India,
Sankarankovil Branch,
Sankarankovil, through its
Branch Chief Manager,
309, Rajapalayam Road,
Sankarankovil Town & Taluk
Tankasi District-627 756.

... 1st Respondent/Petitioner/
Plaintiff

2.The Senior Divisional Manager(Sales Division)
M/s.Indian Oil Corporation Limited,
Madurai Branch Office,
No.2, Race Course Road,
Chockikulam,
Madurai-625 002.

... 2nd Respondent/ 3rd
Respondent/3rd Defendant



Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.03.2023 in I.A.No. 2 of 2023 in O.S.No.241 of 2022 on the file of the Additional District Court (Fast Track Court), Tenkasi and allow the civil revision petition.

For Petitioners
For R1

:Mr.R.J.Karthick
:Mr.N.Dilipkumar

ORDER

This civil revision petition is filed against the fair and decreetal order, dated 23.03.2023 passed in I.A.No.2 of 2023 in O.S.No.241 of 2022, by the Additional District Court (Fast Track Court), Tenkasi.

2.According to the petitioners, the first respondent has filed the suit in O.S.No.241 of 2022 before the Additional District Court (Fast Track Court), Tenkasi, for recovery of money against the petitioners/defendants. During the pendency of the suit, the first petitioner/defendant was attempting to alienate the property and therefore, he was constrained to move an application in I.A.No.2 of 2023 for attachment of the property belonging to the petitioners/defendants before the judgment of the suit. The said application was resisted by the petitioners/defendants stating that the first petitioner had paid a sum of Rs.13 lakhs on various occasions and therefore, the property is not liable to be attached. There is no need for attaching the property of the petitioners/defendants.



3. However, the trial Court, considering the materials on record and the arguments advanced by the respective counsel, allowed the said petition.

Against which, the present civil Revision Petition is filed.

4. The learned counsel appearing for the petitioners would submit that there is no cause of action under Order XXXVIII Rule 5 C.P.C., and there is no necessity for the petitioners to sell the schedule mentioned property. It is further stated that the property was already leased to the second respondent and also mortgaged with the Bajaj Finance Limited as security and therefore, the property of the petitioners/defendants cannot be attached.

5. It is further stated that without proper evidence on record to substantiate that the petitioners/defendants are attempting to sell the property to defeat the claim made by the first respondent/plaintiff, the Court below has erroneously allowed the I.A. It is further submitted that the first respondent is trying to convert unsecured money claim into a secured claim by filing the above petition for attachment before the judgment of the suit.

6. On the other hand, the learned counsel appearing for the first respondent would submit that the first petitioner is trying to alienate the property belonging to him and the only intention is to defeat the lawful claim made by the petitioners/defendants.



7. During the course of arguments, the second petitioner has submitted an undertaking affidavit before this Court. The relevant Paragraph Nos. 2 and 3 are extracted hereunder:

“2.I respectfully submit that the 1st respondent herein/plaintiff filed O.S.No.241 of 2022 before the Additional District Court (Fast Track Court), Tenkasi, for recovery of Rs. 31,35,469/- with 12.5 interest per annum. Along with the suit, the 1st respondent herein filed I.A.No.2 of 2023 in O.S.No.241 of 2022 under Order XXXVIII Rule 5 of C.P.C., to attach my property for Rs.36,35,469/- before the judgment of the suit. The lower Court by its fair and decreetal order dated 23.03.2023 in I.A.No.2 of 2023 in O.S.No.241 of 2022 ordered to attach the property before passing the judgment. Challenging the same, the present Civil Revision petition is filed.

3.I further submit that in the year 2004 itself, the 1st item of the property was leased out to the 2nd respondent herein for 20 years. Moreover, I have availed Rs.51,00,000/- from Bajaj Finance Limited by mortgaging the 2nd item of the property/dwelling house and Bajaj Finance has charge over the same. Further, the property sought to be attached fetches more value than the suit amount. Moreover, the 1st item of the property is the petrol bunk. Hence, I undertake that I will not alienate the property till the disposal of the suit.”

8. The undertaking given by the second petitioner was accepted on the side of the first respondent and their only contention is that in the said undertaking there is no specific mention about which property the said undertaking is given.



9.The first respondent has not sufficiently established that the first petitioner is attempting to alienate the property to defeat the rights of the first respondent/plaintiff. Hence, without any concrete evidence, the allegation is not sustainable. Therefore, the order of attachment passed by the trial Court is hereby set aside. However, the petitioners are directed not to alienate the two properties belonging to the petitioners till the disposal of the suit as per the undertaking given by the petitioners. Accordingly, this Civil Revision Petition is allowed.

10.Considering the facts and circumstances of the case, this Court directs the learned Additional District Judge, Fast Track Court, Tenkasi, to dispose the suit on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. The first respondent Bank is permitted to register this order to ensure that the first petitioner shall not alienate the suit properties till the disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

28.07.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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K.GOVINDARAJAN THILAKAVADI, J.

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To

- 1.The Additional District Judge,
Fast Track Court,
Tenkasi.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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