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CRP (MD) No.1793 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.07.2023
Pronounced on	.11.2023

CORAM:

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

CRP (MD) No.1793 of 2023

and

CMP (MD).No.9474 of 2022

Ravi

... Petitioner/Defendant

Vs

Duraimurugan

... Respondents/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the impugned order dated 06.06.2023 rendered in I.A.No.1 of 2023 in O.S.No.70 of 2023 on the file of the learned Subordinate Judge, Thootukudi by allowing the civil revision petition.

For Petitioner : Mr.S.Vishnuvardhan

For Respondent : Mr.S.Senthil Sankaranatha Kumar



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ORDER

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This revision petition is preferred as against the order dated 06.06.2023 passed in I.A.No.1 of 2023 in O.S.No.70 of 2023 on the file of the learned Subordinate Judge, Thootukudi

2. According to the revision petitioner, the respondent/plaintiff filed the above suit in O.S.No.70 of 2023 for recovery of money along with I.A.No.1 of 2023 for attachment before judgment of the property belonging to the revision petitioner. The learned Subordinate Judge allowed the petition for attachment before judgment without providing sufficient opportunity to the revision petitioner/defendant to put forth his defence.

3. The learned counsel appearing for the revision petitioner would submit that before passing an order for attachment before judgment, the learned judge ought to have considered whether any specific averment is pleaded by the plaintiff which warrants the order for furnishing security or



attachment before judgment. He would submit that an order of attachment before Judgment should not be granted on mere asking. He would further submit that an unsecured debt cannot be converted into a secured debt by seeking an order of attachment before judgment and therefore, the order of attachment passed by the learned Subordinate Judge, Thoothukudi, is liable to be set aside. He would further submit that the retirement benefit of the petitioner cannot be attached and therefore, the attachment order passed by the learned Subordinate Judge, Thoothukudi is liable to be set aside.

4.The learned Counsel would further submit that if the attachment is effected, it will amount to closing down the properties of the defendant. In the absence of a specific claim made in the plaint, no such relief for attachment before judgment can be granted. The plaintiff, to avail the benefit of attachment before judgment, need to show, prima facie, that he has a bonafide and valid claim and also satisfy the Court that the defendant is about to remove or dispose of the whole or part of his property, with an intention of obstructing or delaying the execution of any decree that may be passed against him. To support his contention, he has relied upon the following cases



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reported in **2013 (1) LW 4152** and **(2008) 2 SCC 302** .

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5.The learned Counsel appearing for the respondent/plaintiff would submit that the revision petitioner/defendant has borrowed a sum of Rs. 3,25,000/- from respondent/plaintiff under promissory note dated 20.07.2021 promising to repay the same with interest at the rate of 12 %. Since the revision petitioner/defendant failed to repay the said amount inspite of repeated demands made by the respondent/plaintiff, the respondent/plaintiff was constrained to file the above suit for recovery of money. The learned counsel would further submit that the petitioner/defendant was working in the port at Thoothukudi and got retired on 27.04.2023. Hence, he filed an application in I.A.No.1 of 2023 to furnish security for a sum of Rs.5,00,000/- within the stipulated time to be fixed by the Court failing which to attach the retirement benefits such as arrears of salary, allowances, encashment of leave salary, compensation of a sum of Rs.5,00,000/- before Judgment. The trial Court, considering the bonafide claim of the respondent/plaintiff ordered for attachment of the retirement benefits is liable to be attached before judgement. Hence, no interference is called for in the order passed by the trial



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6.Heard on both sides, records perused.

7.The object of Order 38 Rule 5 CPC, in particular, is to prevent any defendant from defeating the realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the Court, his movables. However, before exercising the power under the said Rule, the Court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. Further, the plaintiff needs to establish that the defendant is attempting to remove or dispose of his assets with an intention of defeating the decree that may be passed. The power Under Order 38 Rule 5 CPC should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. In the present



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case, the plaintiff moved an application under Order 38 Rule 5 of Civil Procedure Code praying for a direction to the defendant to offer sufficient security for the suit claim and if he failed to do so, for attachment before judgement. The trial Court by its order dated 06.06.2023 has allowed the said application. However, the defendant cannot be debarred from dealing with his property whether movable or immovable merely because a suit is filed or about to be filed against him. The plaintiff should show prima facie that the defendant is attempting to defeat any decree passed in favour of the plaintiff. The Hon'ble Supreme Court in the judgment reported in ***AIR 2008 SC 1170*** held that before ordering attachment before judgment or before directing the defendant to furnish security, the Court has to prima facie form an opinion that the defendant is about to dispose of his property with the intention of delaying or defeating the rights of the plaintiff. The petition averment would only show that the plaintiff apprehends that the defendant is likely to dispose of the retirement benefits.



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.11.2023

vsn

To

The Subordinate Judge, Thootukudi



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K.GOVINDARAJAN THILAKAVADI

vsn

CRP (MD) No.1793 of 2023
and
CMP (MD).No.8938 of 2023

.11.2023