



Rev.Aplc(MD)No.26 of 2023 in
C.R.P.(MD)No.614 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Rev.Aplc(MD)No.26 of 2023
in
C.R.P.(MD)No.614 of 2022

P.K.Rajkumar, S/o.Late.Krishnasamy
Proprietor,
AARISMAA Dairy,
No.33, Sriram Apartment,
Red Cross Road,
Shanmugapuram,
Palani and also at
No.14A, Palaniappa Complex,
New Dharapuram Road,
Palani Town.

.. Petitioner

Versus

1.T.Babu

2.Canara Bank,
Palani,
Rep. by its Chief Manager,
Having Office at Railway Feeder Road,
Palani Town.

.. Respondents

Prayer :- Petition filed under Section 114 read with Order XLVII Rules 1 and 2 of C.P.C., against the order dated 25.04.2022, passed in C.R.P.(MD)No.614 of 2022.

For Petitioner : Mr.S.C.Herold Singh

For R1 : Mr.M.P.Senthil



ORDER

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The petitioner is the defendant before the Additional District Court, Palani, in O.S.No.17 of 2021. The said suit has been filed for recovery of money allegedly due from the petitioner by the first respondent herein.

2.The first respondent herein had earlier filed I.A.No.19 of 2021 under Order XXXVIII Rules 5 and 6 and Section 151 of C.P.C. In the said proceedings, the petitioner herein had filed an affidavit of undertaking, undertaking that not to demolish the property, which was mortgaged with the second respondent Bank for a sum of Rs.1,10,00,000/-.

3.Recording the above undertaking of the petitioner, I.A.No.19 of 2021 was dismissed by the learned Additional District Judge, Palani, by an order dated 31.03.2021. Under these circumstances, the respondent filed the above Civil Revision Petition, which came to be disposed of by an order dated 25.04.2022 with the following observation:-

" 3.Originally, the suit in O.S.No.17 of 2021 was filed by the revision petitioner/plaintiff against the respondents/defendants for recovery of amount. In the suit, the revision petitioner has filed a petition in I.A.No.19 of 2021 for attachment of property before Judgment under Order XXXVIII Rule 5 & 6 of Civil Procedure Code. The first respondent has given an undertaking that he would not sell the property and hence the petition was dismissed. The grievance of the learned counsel appearing for the petitioner is that the first respondent should given an undertaking that he would not alienate the property and the same should be intimated to the concerned Sub



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Registrar.

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4.In view of the above, the first respondent is hereby directed to file a fresh affidavit before the trial Court that he would not alienate the suit property and the same may be intimated to the concerned Sub Registrar.

5.With this direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed."

4.The petitioner, who is the defendant in the said suit and first respondent respondent in the Civil Revision Petition, has now filed the present Review Application.

5.It is submitted that once an undertaking has been recorded, there is no necessity for filing counter affidavit.

6.Per contra, the learned counsel for the first respondent/revision petitioner submits that serious attempts are being made by the petitioner to alienate the property to settle the dues to the second respondent Bank/Canara Bank and once the property is sold, the first respondent/revision petitioner will be left with no other property or security for recovering the amount due from the review petitioner herein.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first respondent.



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8. Whether indeed the review petitioner is attempting to sell the property or not cannot be guessed. However, having given an undertaking that the review petitioner will not alienate the property, I find no reasons for such an undertaking should not be reflected in the Encumbrance Certificate and accordingly, proper entries are directed to be made in the 'A' Register by the jurisdictional Sub-Registrar within whose jurisdiction the said property is situated. Therefore, I am inclined to dispose of this Review Application at the stage of admission, by directing the jurisdictional Sub-Registrar to make entries in the relevant Register that the property in question stands attached in favour of the first respondent/revision petitioner.

9. The Review Application is disposed of accordingly. No costs.

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

21.04.2023



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C.SARAVANAN, J.

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