



C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

N.Thiyagu ... Appellant/ def

Vs.

R.Yogeshkannan ... Respondent/plai

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (a) of C.P.C. against the orders dated 06.10.2023 in I.A.No.2/2023 in O.S.No.49/2023 on the file of the District and Sessions Court No.II, Kancheepuram.

For Appellant : Ms.S.Thamilzharasi

For Respondent : Mr.V.Manoharan

J U D G M E N T

The present appeal is filed seeking to set aside the orders of the learned District and Sessions Judge No.II, Kancheepuram in



C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

WEB COURT I.A.No.2/2023 in O.S.No.49/2023.

2. The respondent filed a suit in O.S.No.49/2023 for recovery of Rs.24,40,000/- from the defendant based on a promissory note dated 26.03.2022. The appellant / defendant filed a written statement and the case now stands posted for trial. The plaintiff filed a petition in I.A.No.2/2023 seeking to attach the properties of the defendant (appellant) before judgment under Order 38 Rule 5 CPC. The learned District and Sessions Judge No.II, Kancheepuram passed an *ex parte* order of attachment of the properties of the defendant (appellant). Subsequently, the appellant entered appearance through a counsel and on his appearance the trial court judge raised the order of attachment vide his orders dated 22.06.2023 without assigning any reason. It was infact a non-speaking order. Therefore, the plaintiff filed C.R.P.No.2611/2023 before this Court and this Court vide its orders dated 28.07.2023 set aside the orders passed by the trial court judge and further observed thus.



C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

WEB COPY

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The trial court is directed to issue notice to the respondent/defendant seeking his response as to why the order dated 28.02.2023, attaching the property, shall not continue till the disposal of the suit, within a period of four weeks from the date of receipt of a copy of this order. On the basis of the response of the respondent/defendant as well as the counter affidavit, if any, filed by the revision petitioner/plaintiff, the trial court shall decide as to whether the order dated 28.02.2023 shall be continued or it is required to be raised, in the interest of justice."

3. As per the orders of this Court, the trial court judge issued notice to the defendant calling upon him to furnish security on or before 15.09.2023. Accordingly, the respondent furnished security since the trial court was of the opinion that it was not in an appropriate form ordered attachment of the properties on 15.09.2023. Once again this is also a non-speaking order.



C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

WEB COPY

4. Heard Ms.S.Thamilzharasi, learned counsel for the appellant and Mr.V.Manoharan, learned counsel for the respondent.

5. A perusal of the orders passed by the trial court shows that the trial court has not applied its mind while passing the orders under Order 38 Rule 5 CPC. Initially, the trial court passed an ex parte order of the attachment of the properties. Subsequently, on appearance of the defendant it raised the attachment order of its own without assigning any reason. Subsequently at the intervention of this Court in CRP.No.2611/2023 the said order was set aside. Thereafter, the respondent furnished security as per the order of the trial court but the trial court had rejected the security on the ground that it is not in accordance with law. As already observed this is also a non-speaking order. In the circumstances, the order of the trial court dated 06.10.2023 is set aside.



C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

WEB COPY

6. Accordingly, this appeal is allowed and the matter is remitted back to the trial court and trial court is directed to consider the case afresh after affording reasonable opportunity to both the parties within a period of four weeks from the date of receipt of a copy of this order / uploading of the order. No costs. Consequently, connected civil miscellaneous petition is closed.

12.09.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mtl



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C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

R. HEMALATHA, J.

mtl

To

1.The District Sessions Court No.II, Kancheepuram.

2.The Section Officer, VR Section, Madras High Court, Chennai.

C.M.A.No.2524 of 2024
and C.M.P.No.20017 of 2024

12.09.2024