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C.M.A.No.3103 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3103 of 2024

and

C.M.P.No.25625 of 2024

A.K.Ram Prakash

... Appellant

Vs.

A.K.Venkatachalam

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of C.P.C, against the fair and decretal order dated 16.02.2024, made in I.A.No.2 of 2023 in O.S.No.147 of 2023 on the file of the 4th Additional District and Sessions Judge, Erode District, at Bhavani.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.M.Jeevanandam

JUDGEMENT

This Civil Miscellaneous Appeal has been filed as against the fair and decretal order dated 16.02.2024, made in I.A.No.2 of 2023 in O.S.No.147 of 2023 on the file of the 4th Additional District and Sessions



C.M.A.No.3103 of 2024

Judge, Erode District at Bhavani.

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2. It is alleged that, on 21.01.2023, the appellant has borrowed money from the respondent for business and family needs and lieu of the discharge of the same, the appellant had issued a cheque dated 21.02.2023 bearing No.009147 drawn on Axis Bank Limited, J.P.Nagar, Mysore Branch, for a sum of Rs.30,00,000/-. The said cheque was returned with an endorsement that payment stopped by drawer, pursuant to which, the respondent caused legal notice dated 25.02.2024 and there was no payment despite the receipt of notice. Hence, the respondent has filed a suit in O.S.No.147 of 2023 on the file of the learned 4th Additional District and Sessions Judge, Bhavani, Erode District along with an application under Order XXXVIII Rule 5 of CPC seeking for attachment before judgment in I.A.No.2 of 2023 in respect of property comprised in Survey No.974/1H, to an extent of 0.41.00 hectare attached with Motor pump set service connection thereon situated at Anthiyur Village and Taluk, Erode District and the said application was allowed vide order dated 16.02.2024. Challenging the same, the appellant has filed the present appeal before this court.

3. Heard the learned counsel for the parties and perused the



C.M.A.No.3103 of 2024

materials available on record.

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4. Though very many grounds have been raised in this appeal, however, at the time of arguments, learned counsel for the appellant restricted his prayer and sought permission of this court to substitute the subject property to satisfy the claim amount with respect to another property and he has also made an endorsement to that effect in the petition today.

5. In view of the above, this court, without interfering with the impugned order, grants liberty to the appellant to file appropriate application seeking substitution of the subject property with another property.

6. Accordingly, this Civil Miscellaneous Appeal is dismissed with the aforesaid liberty. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

02.12.2024

Index : Yes / No

Speaking order / Non-speaking order

NCC : Yes / No



WEB COPY



C.M.A.No.3103 of 2024



WEB COPY



C.M.A.No.3103 of 2024

M.DHANDAPANI, J.,

sp

C.M.A.No.3103 of 2024

02.12.2024