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CRP. No.2980 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2024

PRONOUNCED ON : 19.07.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. (PD) No.2980 of 2021

&

CMP No.21274 of 2021

H.N.Prakash Chand

... Petitioner/plaintiff

Vs.

1.M/s.Decton Enterprises,
Hosur,
rep. by its Managing Partner,
Sri.N.Vijayakumar,
S/o.Narayanappa,
residing at,
Pedda Belagondapalli Village,
Denkanikotta Taluk,
Krishnagiri District-635 114.

2.C.Prakash

3.R.Janardhanan . respondents/defendants

(R3 impleaded vide Court order dated 01.03.2024

made in CMP No.4921 of 2024 in

CRP No.2980 of 2021 by SSJ)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the Additional District Court, Hosur dated 22.03.2021 passed in I.A.No.255 of 2018 in O.S.No.117 of 2018.



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For Petitioner : Mr.Mukunth, SC for
Mr.S.Chandrasekar
For Respondents : M/s.McGan Law Firm for R1
Mr.N.Naganathan for R2
Mr.V.Manisekaran for R3

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order of the Additional District Court, Hosur dated 22.03.2021 passed in I.A.No.255 of 2018 in O.S.No.117 of 2018.

2. The petitioner herein is the plaintiff. He filed a suit in O.S.No.117 of 2018 before the Additional District Court, Hosur, for recovery of a sum of Rs.1,09,56,700/- along with interest at 15.50% p.a. from the date of plaint till the date of payment and also for permanent injunction against encumbering 55% of the suit properties till disposal of the suit.

3. Apprehending that the respondents/defendants were making sincere efforts to alienate the suit schedule properties to the third parties to frustrate the suit properties, along with the suit, the petitioner also moved an



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interlocutory application in I.A.No.255 of 2018 in O.S.No.117 of 2018 before the Court below, under Order 38 Rule 5 CPC r/w 151 of CPC, seeking attachment before judgment in respect of the suit schedule properties.

4. The 1st respondent raised a loan with M/s.Indian Bank, Hosur branch, by mortgaging the suit schedule properties and later failed to discharge the said loan, which prompted the M/s.Indian Bank to file a suit in O.S.No.319 of 1996 for recovery of mortgage loan amount, which was transferred to DRT-I. Chennai and numbered as T.A.No.1682 of 1997 and again, it was transferred to DRT-III, Chennai and numbered as T.A.No.2 of 2010. It appears that the petitioner/plaintiff based on his claim on the ground that he made a payment of Rs.25,00,000/- to the DRT-III on behalf of the 1st defendant and Rs.7,00,000/- to the 3rd defendant and in total he made payment of Rs.32,00,000/- and thereby on clearance of entire dues, the suit properties have to be conveyed in favour of the second and third parties and the second party is entitled to 45% and the third party is entitled to 55% of the sale proceeds or the property. While so, complaining to defeat the suit proceedings, the defendants are attempting to alienate the suit



schedule properties, the petition in I.A.No.255 of 2018 was filed.

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5. The petition is resisted by the respondents/defendants, by filing a counter affidavit, *inter alia*, stating that towards the amount paid by the petitioner for Rs.30,00,000/-, another property in S.No.332/5 to an extent of 3.59 acres has been sold to the son of the petitioner on 6.5.2013 based on a compromise entered into between the parties and thereby, earlier MoU dated 17.12.2012 executed by the parties, came to be cancelled. It is further stated that as per Exs.P5 and P6, the suit properties were already attached by the DRT-III and no question of alienation by the respondents/defendants arises so as to entertain the application filed by the petitioner. Hence, the respondents/defendants sought for dismissal of the application.

6. On consideration of the arguments put forth by the learned counsel on either side as well as the documents filed by the parties, the learned Judge, vide order dated 22.03.2021, declined to order attachment of the suit schedule properties before judgment and accordingly, dismissed the application.



7. Questioning the order passed by the Court below, the petitioner has come forward with the present Revision Petition.

8. Now the only point for consideration is whether the order passed by the Court below, suffers from any illegality or infirmity, is liable to be set aside?

9. Mr. S. Chandrasekhar, learned counsel appearing for the petitioner would contend that the Court below has not dealt with the issue in proper perspective and rendered an erroneous order, which is liable to be set aside. He pointed out that the Court below has failed to consider the fact that the onus is on the respondents to prove that the respondents have entered into compromise and the cancellation of MoU dated 17.12.2012 and thereby, they get relieved from MoU dated 17.12.2012. He also contended that the Court below has not appreciated the fact that the land said to have been sold to the son of the petitioner in lieu of Rs.32,00,000/- is altogether related to different transaction and pertaining to MoU dated 17.12.2012 entered by the petitioner and respondents. He also contended that it is not in dispute that the petitioner paid amount to the defendants and DRT, as such, he is entitled



to recover the same and hence, the Court below ought to have considered the claim of the petitioner and ordered attachment of the suit properties since there is every likelihood of alienating the suit properties by the respondent as soon as the Bank discharges the properties as there were no outstanding dues payable by the defendants. With these contentions, the learned counsel sought to set aside the order passed by the Court below.

10. On the other hand, the learned counsel appearing for the respondents would submit that absolutely, there is no irregularity or illegality in the order passed by the Court below since the Court below having considered all the material facts, more particularly, the cancellation of MoU, dated 17.12.2012 and the property sold to the petitioner's son in lieu of the amount paid by the petitioner and also the fact that already, the suit properties were attached by the DRT, rightly dismissed the application since no *prima facie* case has been made out by the petitioner. With these contentions, the learned counsel would urge this Court to dismiss the present Revision Petition.

11. It is relevant to extract the relevant portion of the order passed by



the Court below while declining to order attachment of the suit properties before judgment, which reads as under:

“9. Order 38 Rule 5 CPC provides that when the Court is satisfied that the defendant with intention to obstruct or delay execution of decree that may be passed against him, is about to dispose of his properties, the court may direct the defendant to furnish security. In this case the suit properties are subject to attachment by DRT-III, Chennai as per Encumbrance Certificates Ex.P-5 and Ex.P-6 filed. Therefore the defendants cannot dispose of the properties at will. Further the contention of the defendants that the claim of the petitioner/plaintiff is based on a cancelled MOU, and further that the claim is barred by Limitation are material aspects to be decided. In the circumstances, on the discussion supra. the petitioner/plaintiff not made out the grounds which are required for the application of the provisions of Order 38 Rule 5 CPC for grant of attachment. Therefore, the petitioner is not entitled to the relief of attachment of suit properties as prayed for.”

12.The learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in ***Rajendran and Others Vs. Shankar Sundaram & Others*** reported in (2008) 2 SCC 724, wherein, it is held that



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the Court while exercising its jurisdiction under Order 38 Rule 5 of CPC is required to form a *prima facie* opinion at that stage and it need not go into the correctness or otherwise of all the contentions raised by the parties.

13.In fact, the proposition of law laid down in the above mentioned judgment is supporting the findings of the trial Court that the petitioner / plaintiff has not made out the grounds which are required to entertain the application filed under the provisions of Order 38 Rule 5 for grant of attachment.

14.As seen from the facts of the case, admittedly the suit properties are subjected to attachment by DRT -III, Chennai as per Exs.P5 & 6 i.e., Encumbrance Certificates. As and when the suit properties are subjected to attachment by DRT-III, Chennai, the defendants cannot alienate the same at their will.

15.In these circumstances, the trial Court is of the *prima facie* opinion that the petitioner is not entitled for the relief of attachment of the suit properties before judgment by invoking Order 38 Rule 5 of CPC. As such,



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in the considered opinion of this Court, there is no illegality or infirmity in the order passed by the Court below in dismissing the application in IA.No.255 of 2018. By its order dated 22.03.2021, the Court below has considered the entire material available on record and passed a well considered and reasoned order which is well founded and as such interference of the said order is not warranted in this Civil Revision Petition.

16. Accordingly, this Civil Revision Petition fails and it is dismissed.

No costs.

Consequently, connected miscellaneous petition is closed.

19.07.2024

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Index : Yes / No

Internet : Yes / No

To

The Additional District Judge, Hosur

BATTU DEVANAND.J.,

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**Pre-Delivery Order in
C.R.P. (PD)No.2980 of 2021**

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