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C.R.P.(PD).No.4581 of 2023 & C.M.P.No.27397 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.4581 of 2023 &
C.M.P.No.27397 of 2023

Kavin

... Petitioner/Plaintiff

-Versus-

Amutha

... Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Docket Order dated 17.11.2023 made in I.A.No.3 of 2023 in I.A.No.2 of 2023 in O.S.No.8 of 2023 on the file of the IV Additional District Judge, Bhavani.

For Petitioner : *Mrs.Chithra Sampath,*
Senior Counsel, Assisted by
Mr.S.Viswanathan for
Mr.M.A.Mutalakan

For Respondent : *Mr.V.Subramaniam for*
Mr.S.P.Yuaraj

JUDGEMENT

This civil revision petition arises against the decretal order passed by the learned IV Additional District Judge at Bhavani in I.A.No.3 of 2023 in I.A.No.2



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of 2023 in O.S.No.8 of 2023 dated 17.11.2023.

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2. O.S.No.8 of 2023 is a suit for recovery of money on the foot of the promissory note filed by the civil revision petitioner as against the respondent. The case of the plaintiff is that on two dates viz., on 01.01.2021 and 10.05.2021, he had advanced money to the respondent. On 22.11.2022, the defendant entered into an agreement of sale with one Naveen in order to alienate the petition mentioned property. Fearing that the defendant will alienate the property and prevent the due execution of the decree in the event of success, the plaintiff presented the aforesaid suit. He sought for a decree directing the defendant to pay a sum of Rs.91,92,493/- together with interest at 12% per annum. The figure of Rs.91,92,493/- represents the principal of Rs.75,00,000/- together with subsequent interest till the date of presentation of the plaint.

3. On service of summons, the defendant entered appearance and filed a detailed written statement.

4. According to her, she had never borrowed any sum from the plaintiff but had accepted that she had received certain amounts of money from the father of the plaintiff. The circumstances under which the father of the plaintiff



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paid the money were that the defendant's husband was afflicted with serious health complications arising out of diabetes and had to take treatment in a hospital in Coimbatore from May 2020 to June 2022. She would state that the plaintiff's father, in order to gain illegally, had filled up the two promissory notes that were available with him for a sum of Rs.50,00,000/- and Rs.25,00,000/-. In other words, the plea of the defendant is that the promissory notes had not been executed in favour of the plaintiff. It is not supported by consideration. In fine, the documents were not executed after the receipt of the monies from the plaintiff. In the written statement itself, the defendant conceded that she and her husband are proposing to sell the first item of the petition mentioned property, which is to the extent of 1 acre and 10 cents. To that end, they would also concede that they have executed an agreement in favour of one Naveen.

5. Pending the suit, in order to protect his interest, the plaintiff took out an application in I.A.No.2 of 2023 seeking an order to furnish security to the suit claim, failing which to attach the property.

6. A counter was filed to this application, which is more or less, on the



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lines of the written statement stated above.

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7. The suit was originally presented before the learned Principal District Judge at Erode and was subsequently transferred to the learned IV Additional District Judge at Bhavani.

8. After the case bundles were received by the IV Additional Judge, the IV Additional Judge ordered notice in the suit as well as in the application seeking to furnish the security. This order was passed on 11.01.2023. Subsequently, on 06.02.2023, when the matter was taken up, since the security was not furnished, the learned Judge, being left with no other option, ordered the attachment of the petition-mentioned property.

9. In order to raise the attachment, the defendant took out an application in I.A.No.3 of 2023. The learned Judge received a counter from the plaintiff and thereafter, passed an order on 17.11.2023 raising the attachment. The reason given by the learned Judge is that unless and until the attachment is raised, the defendant cannot sell the property and pay the creditors. In other words, the learned Judge permitted the defendant to go ahead with the sale transaction



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entered into between the defendant and Naveen in order to enable the defendant to receive the balance of sale consideration and discharge the debts due to the third party, including the plaintiff.

10. Aggrieved by the same, the present Civil Revision Petition has been presented before this court.

11. Heard Mrs.Chitra Sampath, learned Senior Counsel for Mr.A.Muthalakan for the petitioner and Mr.V.Subramaniam for Mr.S.P.Yuaraj for the respondent. I have gone through the records.

12. In order for the Court to raise an attachment in terms of Order XXXVIII Rule 9 of the Code of Civil Procedure, there are conditionalities viz., either the defendant furnishes security to the extent of the suit claim or when the court comes to a conclusion that the suit is liable to be dismissed and dismisses the suit. This is clear from a bare reading of Order XXXVIII Rule 9 of the Code. Both the circumstances have not arisen in the present case.

13. The learned counsel for the respondent relied on *Vannarakkal*



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Kallalathil Sreedharan v. Chandramaath Balakrishnan, (1990) 3 SCC 291 to

sustain the order. Insofar as that case is concerned, that arose under different circumstances, as would be clear from paragraph 5 of the Order itself. That was a case where an agreement had been entered into on 09.10.1978 and the attachment of the property took place on 16.11.1978. A claim petition was filed by the purchaser, stating that his sale will prevail over the attachment. Under those circumstances, following the position of law as it existed on that date, the Supreme Court was pleased to allow the appeal. That was a case which arose under Order XXXVIII Rule 10 of the Code of Civil Procedure, whereby the code declared that the rights of strangers which had accrued prior to attachment cannot be defeated by the order of the court. As stated supra, the case before us does not arise under such circumstances wherein a third party makes a claim petition, but in the situation where the defendant invoked the provisions of Order XXXVIII Rule 9 in order to raise the attachment that had been passed against her property.

14. Furthermore, after the judgment of the Supreme Court, the Registration Act itself was amended by the Tamil Nadu Legislature, introducing Section 22-B(3). In terms of the said amendment, there is a bar on the registering authority to receive and register a document of alienation, when the



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property is a subject matter of attachment by a competent authority under any State or Central Act or by Court or Tribunal. Therefore, applying section 22-B(3) to the facts of the present case, there cannot be a registration of a sale deed when it is a subject matter of the order of attachment dated 06.02.2023.

15. Since the provisions of Order XXXVIII Rule 9, which have been invoked by the defendant, are not satisfied in the facts of the present case, I am constrained to interfere with the revision. There can be no doubt that the learned Judge has passed an equitable order. But the same is contrary to the provisions of the Code of Civil Procedure. Equity cannot prevail over the black-letter law. When the statute demands that an act be done in a particular way, it should be done in that way and no other way. Leaving it open to the defendant to file a fresh application under Order XXXVIII Rule 9 to seek furnishment of the security, this revision is allowed.

16. The order passed by the learned IV Additional District Judge, Bhavani in I.A.No.3 of 2023 in I.A.No.2 of 2023 in O.S.No.8 of 2023 dated 07.11.2023 is set aside. By virtue of this order, the order of attachment passed by the court shall stand restored. No costs. The connected miscellaneous



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petition is closed.

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17. Both sides request that a direction be given to the learned trial judge to dispose of the suit at an early date. Being a suit for money where the pleadings have been completed, the trial judge is requested to dispose of the suit on or before 30.10.2024.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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V.LAKSHMINARAYANAN, J.

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To

1.The IV Additional District Judge, Bhavani

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