



C.R.P.(MD)No.330 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.11.2023

Delivered on : 20.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.330 of 2023

and

C.M.P(MD)No.1607 of 2023

Priya Chit Funds & Co,
Having Office at No.15/1,
Ramakrishnapuram, Karur.
Rep.by its Partner C.K.Veluswamy,
S/o.Krishnasamy Gounder,
No.393/9, Vangiliyappa Nagar,
Chinnandankoil Road, Andankoil East Village,
Manmangalam Taluk, Karur District.

: Petitioner/Petitioner/Plaintiff

Vs.

1.S.Subramanian

2.S.Bhavani : Respondents/Respondents/Defendants

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 07.12.2022 made in I.A.No.1 of 2021 in O.S.No.748 of 2021 on the file of the Additional Sub Court, Karur.



C.R.P.(MD)No.330 of 2023

WEB COPY

For Petitioner : Mr.K.Prabhakar

For Respondents : Mr.H.Arumugam, for R2.

: No Appearance, for R1.

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2021 in O.S.No.748 of 2021, dated 07.12.2022 on the file of the Additional Sub Court, Karur, dismissing the petition filed under Order 38 Rule 5 of the Code of Civil Procedure.

2. The revision petitioner firm has filed a suit in O.S.No.748 of 2021 for recovery of Rs.7,26,200/- due on the promissory note executed by the respondents/defendants. The revision petitioner has also filed a petition under Order 38 Rule 5 of C.P.C., seeking orders for attachment before judgment of the petition mentioned property. The respondents have filed elaborate counter statement raising objections. The learned trial Judge, after enquiry, has passed the impugned order, dismissing the petition. Aggrieved by the order of dismissal, the plaintiff has preferred the present revision.



C.R.P.(MD)No.330 of 2023

WEB COPY

3. The case of the revision petitioner/plaintiff is that the defendants have borrowed a sum of Rs.5,00,000/- from the plaintiff's firm and executed a promissory note on 02.08.2017 agreeing to repay the loan amount with interest at Rs.0.06 paise per day; that though they have paid the interest upto 31.10.2019, they have not paid any amount towards subsequent interest or principal amount; that the plaintiff has then sent a legal notice, dated 20.02.2021 demanding payment; that the defendants having received the notice, neither sent any reply nor made any payment; that the plaintiff came to know from one N.R.Mani that the second respondent/defendant has been attempting to alienate or encumber her property to his close allies and that therefore, the revision petitioner was constrained to file the above petition seeking for attachment before judgment.

4. The respondents have filed a counter statement raising serious objections and further stated that they have obtained loan from Ajantha Finance and at that time, they have obtained signatures in blank papers and promissory notes; that the defendants, after settling the amount, have



C.R.P.(MD)No.330 of 2023

demanded the said finance company to return the documents taken from them, but they have been postponing the same on some pretext or other; that the revision petitioner has suppressed the availability of a building measuring 10 feet x 16 feet, car shed, electricity and water connections and bore well in the petition mentioned property; that though the petition mentioned property is worth about more than Rs.1,00,00,000/-, they have valued the property very low and that therefore, the petition is liable to be dismissed.

5. As rightly contended by the learned counsel for the petitioner, the learned trial Judge only on the ground that the revision petitioner/plaintiff has suppressed the availability of a building, car shed, electricity and water service connection and the plaintiff has valued the petition mentioned property at a lesser value, has come to the decision that the revision petitioner is not entitled to get the relief claimed and on that basis, dismissed the petition.

6. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Raman Tech. & Process Engg. Co. & Anr vs***



C.R.P.(MD)No.330 of 2023

Solanki Traders reported in **2008 (2) SCC 302**, wherein the Hon'ble Apex

WEB COPY

Court has observed as follows :

“4. The object of supplemental proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of order 38 rule 5 CPC in particular, is to prevent any defendant from defeating the realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The Scheme of Order 38 and the use of the words 'to obstruct or delay the execution of any decree that may be passed against him' in Rule 5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. This would mean that the court should be satisfied the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5CPC. It is well-settled that merely having a just or valid claim or a prima facie case, will not entitle the



C.R.P.(MD)No.330 of 2023

plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.”

7. Considering the above, it is very much clear that the concerned Court is duty bound to first see as to whether the plaintiff has a prima facie case and then to decide as to whether the defendant is attempting to remove or dispose of his assets with intention to defeat the decree that may be passed.

8. It is pertinent to note that the trial Court has to satisfy itself that the plaintiff has shown a prima facie case; that his claim is bona fide and that the defendant has been taking steps to remove or dispose of whole or part of the property with intention of obstructing or delaying the execution of any decree that may be passed against him.



C.R.P.(MD)No.330 of 2023

WEB COPY

9. In the case on hand, as already pointed out, the trial Court has not chosen to consider those aspects, nor gave any finding in that aspects. On the other hand, the learned trial Judge, by mainly relying that there was misdescription of property as the plaintiff has failed to mention the availability of the building, car shed and electricity and water service connection, dismissed the petition.

10. Considering the above, this Court has no hesitation to hold that the learned trial Judge, without considering the relevant aspects, but by considering the irrelevant aspects, has passed the impugned order and as such the same, which is not in accordance with law, is liable to be set aside. Consequently, the above matter is ordered to be remitted to the trial Court and the trial Court is directed to conduct enquiry and pass order in accordance with law.

11. In the result, the Civil Revision Petition is allowed and the impugned order passed in I.A.No.1 of 2021 in O.S.No.748 of 2021, dated 07.12.2022 on the file of the Additional Sub Court, Karur, is set aside and the matter is remitted back to the trial Court with a direction to conduct



C.R.P.(MD)No.330 of 2023

WEB COPY

enquiry by permitting both the parties to adduce evidence and to decide the petition for attachment before judgment, on merits in accordance with law. The learned Additional Subordinate Judge is directed to conduct enquiry and dispose of the petition within a period of one month from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

20.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Additional Subordinate Judge,
Karur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.330 of 2023

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.R.P.(PD)(MD)No.330 of 2023
and
C.M.P(MD)No.1607 of 2023

Dated : 20.02.2024