



C.R.P.PD(MD)No.586 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.PD(MD).No.586 of 2021

&

C.M.P(MD).No.3167 of 2021

Nijin Raj

... Petitioner

Vs.

Gnana Jeba

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.42 of 2019 dated 20.01.2021 on the file of the Subordinate Judge, Kuzhithurai.

For Petitioner : Mr.S.C.Herold Singh

ORDER

This Civil Revision Petition is directed against an order dated 20.01.2021 passed in I.A.No. 1 of 2019 in O.S.No.42 of 2019 on the file of the court of Subordinate Judge, Kuzhithurai. The said application was filed by the petitioner/plaintiff under Order 38 Rule 5 and 6 of CPC seeking



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attachment before judgement of the petition schedule property. The averments filed in support of the said application reads as under:

“ 8. As per the statement of account given below a sum of Rs.2,25,555/- is to me. Now it seems that the respondent is trying to alienate the petition schedule property to strangers so as to defeat my legal claim. The property is hereunder scheduled is the absolute property of the respondent. If the respondent alienates the petition schedule property I will be put to very great hardship and injury and I may not be in a position to realise the plaint claim from the respondent.”

2. The averments made in the above extracted paragraph are the only averments that are in support of the application under Order 38 Rule 5 and 6. The very allegation itself is on uncertain information and the same is only an attempt to alienate the petition schedule property to the strangers so as to defeat the legal claim of the petitioner. In terms of the settled legal position as held by the Hon'ble Apex court as to the requirements that are required to be fulfilled for seeking relief under Order 38 Rule 5 are not at all sufficient. In the case of ***Raman Tech. & Process Engg. Co. & Anr Vs. Solanki Traders*** reported in ***2008 (2) SCC 302***, the Hon'ble Supreme Court



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has held as under:

“ 5. The power under Order 38 Rule 5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It Should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlement, under threat of attachment.

6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his



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property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38 Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment (See - Prem Raj Mundra v. Md. Maneck Gazi, AIR (1951) Cal 156, for a clear summary of the principles.)

7. In this case, the suit claim was Rs. 99200/- The notice issued before filing the suit related to dishonour of two cheques for Rs. 22487/-. The particulars of the claim in the plaint were not specific. The trial court had rejected the application on the ground that plaintiff had failed to make out a prima facie case. It did not, therefore, examine the question whether defendant was attempting to defeat any decree that may be passed by shifting his machinery. On the other hand, the High Court ignored the absence of prima facie case. It granted relief under Order 38 rule 5, in exercise of revisional jurisdiction, swayed by the fact that the defendants had shifted their assets to another premises.

8. On the facts and circumstances, the High Court ought not to have interfered with the order rejecting the application. We, therefore, allow this



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appeal and set aside the order of the High Court and restore the order of the trial court.”

3. The law as settled by the Hon'ble Apex Court as it is applied, the averments made in paragraph 8 of the affidavit filed in support of the application under order 38 Rule 5 are totally insufficient. The learned trial court had rightly examined the matter in detail and passed the order under revision. In the considered view of this court the same does not warrant any interference.

4. In the light of the above, the Civil Revision Petition is dismissed. However, considering the fact that the suit is of the year 2019 and this being only a suit for recovery of money lent, trial court is directed to dispose of the suit as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

25.03.2024.

NCC : Yes/No
Internet : Yes
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MUMMINENI SUDHEER KUMAR, J.

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To

The Subordinate Judge, Kuzhithurai

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