



C.R.P(MD)No.2280 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.2280 of 2024
and
C.M.P(MD)No.12914 of 2024

Veerapandian

... Petitioner / Petitioner /
Plaintiff

Vs.

Mallika

... Respondent / Respondent /
Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records of the petition and order passed in I.A.No.1 of 2022 in O.S.No.156 of 2022 on the file of the Subordinate Court, Sivakasi dated 14.08.2023 and set aside the same by allowing this civil revision petition.

For Petitioner : Mr.P.Athimoolapandian

ORDER

Heard the learned counsel appearing for the revision petitioner.

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2.The plaintiff in O.S.No.156 of 2022 on the file of the Sub Court, Sivakasi is the revision petitioner herein. He filed the said suit for recovering a certain sum of money from the defendant. He filed I.A.No.1 of 2022 for effecting attachment before the judgment. The same was dismissed vide order dated 14.08.2023. Challenging the same, this Civil Revision Petition came to be filed.

3.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of revision petition.

4.I am not swayed by the said submissions. It is seen that the petitioner had advanced a certain sum of money only on the strength of pro-note. The petitioner is said to have paid the sum only in cash. It is not the case of account transfer. The petitioner has also filed S.T.C.No. 28 of 2022 on the file of the learned Judicial Magistrate No.1, Sivakasi against the defendant herein for the offence under Section 138 of the Negotiable Instruments Act, 1881. The Court below noted that the petitioner had not established that the defendant is trying to alienate her property with the intension of obstructing or delaying the execution of decree that may be passed against her. The Court below had referred to



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the decision of the Hon'ble Supreme Court in ***Raman Tech. & Process Engg. Co. & another -vs- Solanki Traders*** in Appeal (civil) 6171 of 2001 dated 20.11.2007 in which it had held that the power under Order 38 Rule 5 CPC is drastic and should not be exercised mechanically for the asking. It has also observed that the purpose of Order 38 Rule 5 CPC is not to convert an unsecured debt in to secured debt. The Court below was satisfied that the petitioner had not made out a case for passing an order under Order 38 Rule 5 CPC. A discretionary order has been passed. It has not been shown to be perverse. Hence I do not want to interfere with the same in exercise of the jurisdiction under Article 227 of the Constitution of India.

5.This Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

MGA

To

The Subordinate Court,
Sivakasi.

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