



C.M.A.(MD)No.1044 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1044 of 2024

and

CMP(MD)No.10928 of 2024

S.Baisil

... Appellant

VS.

Shoba Helen Nadarajan

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 104 and Order 43, Rule of Civil Procedure Code, to set aside the the Fair and Decreetal order dated 03.06.2024, made by the Additional District and Sessions Judge, Padmanabhapuram, in I.A.No.2 of 2023 in O.S.No.85 of 2023 on his file, allowing the said I.A.

For appellant : Mr.K.N.Thambi

For Respondent : Mr.M.Prabhu



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J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Fair and Decreetal Order dated 03.06.2024 passed in I.A.No.2 of 2023 in O.S.No. 85 of 2023 by the Additional District and Sessions Judge, Padmanabhapuram.

2. Heard the learned Counsel on either side and perused the records.

3. The appellant/plaintiff herein has filed a suit in O.S.No.85 of 2023 against the respondent/defendant herein for recovery of money of Rs.23,92,252/-.

4. While so, the appellant/plaintiff moved an application in the said suit under Order 38 Rule 5 and under Section 151 of C.P.C., to order the respondent/defendant to furnish Rs.25,00,000/- as security and on his failure to do so, the schedule mentioned property may be conditionally attached till the disposal of the suit.



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5. During the enquiry in the interim application, neither the respondent/defendant appeared nor his counsel represented him and hence, the respondent/defendant was set ex-parte.

6. Upon consideration, the trial Court dismissed the petition.

7. The prime object of passing of order of attachment before the judgment is to enable the appellant/plaintiff to realise the amount of the decree and to prevent a decree from becoming infructuous. It is relevant to note that the order that is contemplated is not an unconditional one, but one calling upon the defendant to furnish security, who is to show cause, why security should not be furnished. If the defendant offers to give security, then the Court should go into the question of its sufficiency before issuing a final order of attachment. Of course it should not be utilized as a lever for the plaintiff to coerce the defendants to come to terms.

8. The appellant/plaintiff has stated in his affidavit that the respondent/defendant is negotiating with strangers for selling the scheduled mentioned property and if the respondent alienates the same, he would be put



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to great loss and hardships. These details are absolutely suffice to invoke Order 38 Rule 5. During the enquiry, under Order 38 Rule 5, the first step would be to direct the respondent/defendant to furnish security for the amount mentioned in the petition/plaint as the case may be. Thereafter, it is for the Court either to accept or to reject the same. In this case, the respondent/defendant was not asked to furnish security. Therefore, the order of the trial Court has to be necessarily interfered with and the impugned order stands set aside.

9. The trial Court after issuing notice afresh to the respondent/defendant shall direct the respondent/defendant to furnish security and to decide about its sufficiency and thereafter, shall pass orders in accordance with Order 38 Rule 5.

10. Based on the aforesaid observations, this Civil Miscellaneous Appeal stands allowed. In the result, the impugned order dated 03.06.2024 passed in I.A.No.2 of 2023 in O.S.No.85 of 2023 by the learned Additional District and Sessions Judge, Padmanabhapuram, is set aside and the trial Court is directed to dispose of the suit on merits preferably, within a period of



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six (6) months from the date of receipt of a copy of this judgment. No costs.

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Consequently, connected miscellaneous petition is closed.

27.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional District and Sessions Court, Padmanabhapuram.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

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Pre-delivery order made in
C.M.A.(MD) No.1044 of 2024

27.02.2025