



C.R.P.(PD)(MD) No. 2931 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	09.01.2025
Pronounced on	28.02.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 2931 of 2024 and
CMP(MD).No.16757 of 2024

Shaji Sujatha

... Revision petitioner / Plaintiff

Vs.

Noble Jose

... Respondent / Defendant

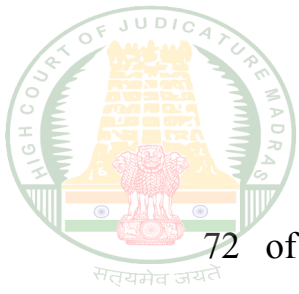
Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.01 of 2023 in O.S.No.72 of 2023, dated 30.09.2024 on the file of the learned Additional District Judge, Kuzhithurai.

For Petitioner : Mr. S. Sivakumar

For Respondent : Mr. P. Subbiah

ORDER

This Civil Revision Petition has been filed against the fair and dectreetal order, dated 30.09.2024 made in I.A.No. 01 of 2023 in O.S.No.



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72 of 2023, on the file of the learned Additional District Judge,

WEB COPY Kuzhithurai.

2. The revision petitioner is the plaintiff in the above suit in O.S.No.72 of 2023, on the file of the Additional District Court, Kuzhithurai. The said suit was filed for recovery of money based on the registered promissory note. Pending suit, the revision petitioner / plaintiff took out an application in I.A.No.1 of 2023 under Order 38 Rule 5 and 6 and Section 151 CPC to direct the respondent / defendant to furnish security for a sum of Rs.15,31,832/-, failing which, the petitioner's property may be attached before Judgment. The said application was resisted on the side of the respondent / defendant stating that the respondent / defendant never borrowed any money from the plaintiff and has not executed the said promissory note or any other documents as alleged in the plaint. According to the respondent / defendant, the said promissory note is a forged document and he was forced to sign in the above document without giving an opportunity to go through the documents. Hence, the petitioner prays for dismissal of the said application. The trial Court dismissed the said application by stating that since it is an un-registered promissory note and that the defendant denying



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borrowal of the said amount and the execution of the alleged promissory note and there is no material to show that the defendant is attempting to remove or dispose of his assessment with an intention of defeating the decree, dismissed the said application. Assailing the said order, the present revision is preferred.

3. The learned counsel appearing for the revision petitioner / plaintiff would submit that the respondent / defendant borrowed a sum of Rs.12,25,500/- on 17.09.2021 by executing a registered promissory note on 13.01.2023. When the revision petitioner demanded the said amount with interest the respondent / defendant failed to repay the amount. Hence, the revision petitioner/ plaintiff was constrained to file the above suit in O.S.No.72 of 2023 on the file of the District Court, Kuzhithurai for recovery of money. He would further submit that on receipt of the legal notice, the defendant is attempting to alienate the suit property in order to defeat the valuable claim of the revision petitioner / plaintiff. Hence, he filed an application to direct the respondent / defendant to furnish the security for a sum of Rs.15,31,832/-, failing which, the petition mentioned property to be attached till the final disposal of the suit. It is submitted that if the respondent / defendant alienates the property, the

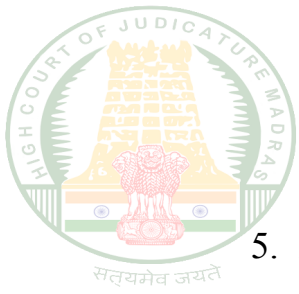


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petitioner / plaintiff cannot realize the claim amount. However, the trial Court without considering the above facts and circumstances erroneously dismissed the said application stating that it is an un-registered promissory note and that there is no materials to show that the defendant is attempting to alienate the property to defeat the claim of the revision petitioner. Whereas the suit promissory note is a registered promissory note, the order passed by the trial Court requires interference by this Court.

4. On the other hand, the learned counsel appearing for the respondent would submit that the respondent / defendant never borrowed any money from the petitioner / plaintiff and his signature was forcibly obtained in the alleged promissory note and therefore, prays for dismissal of this Civil Revision Petition. In support of his contention, the learned counsel appearing for the respondent relied upon the following Judgments:

1. 1985(98) LW 78 (T.Srinivasan and another Vs. V.Srinivasan)
2. 1997(3) CTC 321 (Farook Textiles Vs. Bajran Synthetics Pvt. Ltd.,)
3. 2014(3) CTC 792 (M.Padmini Vs. M.Anandhan)
4. 2014(2)CTC 639 (S.Sidharth Vs. P.Lalitha Kumari and others)

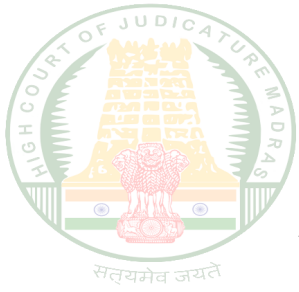


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5. 2003(4) CTC 344 (Southern Petrochemical Industries Corporation
WEB COPY Ltd., and others Vs. S.Rathish Kanna)

5. Heard on both sides and perused the materials available on record.

6. Admittedly, the above suit is filed for recovery of money based on a promissory note. It is needless to say that the Court in an application for attachment of property before Judgment which may use its discretion judiciously and not arbitrarily depending on the facts and circumstances of the given case. In the present case as stated by the trial Court, there is no material on record that the respondent / defendant is attempting to alienate the property in order to defeat the claim of the revision petitioner / plaintiff. Whether the suit promissory note is a forged one or not is for consideration by the trial Court. However the trial Court ought to have ordered for furnishing security as contemplated under Order 38 Rule 5 and 6 CPC. Hence, this Court is of the considered opinion that it is just and proper to direct the respondent / defendant to furnish security for the suit amount before the trial Court.



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7. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.02.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

trp

Copy To:

The learned Additional District Judge, Kuzhithurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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Order made in
C.R.P.(MD) No. 2931 of 2024 and
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28.02.2025