

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:-THIRU R. SHANMUGASUNDARAM B.Com., L.L.B,
DISTRICT JUDGE.

Thursday, the 29th day of August 2024

I.A.No.03/2024 in I.A.No.2/2023 in O.S.No.188/2023

K. Selvaraj

...Petitioner/Plaintiff

vs.

M. Rajan

... Respondent /Defendant

This petition coming before me for final hearing on 22.08.2024 in the presence of Thiru G. Ramesh, advocate for the petitioner and Thiru K. Ramesh, advocate for the respondent and upon hearing the arguments on the side of the petitioner and having stood for consideration till this day, this Court passed the following

ORDER:-

The petitioner has filed this petition seeking to pass an Order to register the security furnished by the respondent/defendant at Thirupur Joint-II SRO.

2) Brief averments of the affidavit filed by the petitioner/plaintiff is as follows:-

The petitioner is the plaintiff in the suit. Further, he submits that he filed the above suit for the recovery of amounts due under the suit promissory note, costs and for other reliefs. Further, the petitioner has filed the petition under Order 38 Rule 5 of CPC for attachment before judgment. Further, he submits that, in that petition I.A.2/2023 the respondent/defendant furnished security. Further, he submits that, though he got other valuable properties found in attachment before judgment petition, he furnished security to the petition mentioned property alone, which is lesser valuable one than other. Further, he submits that the security furnished may be

ordered to be registered at Thirupur Joint-II SRO and render justice to avoid further encumbrance. Therefore, he prays to register the security furnished by the respondent/defendant at Thirupur Joint-II SRO. Hence, prays to allow this petition.

3) Brief averments of the Counter filed by the respondent/defendant is as follows:-

The respondent is the defendant in this case. Further, he submits that all the averments made in the petition is false except those that are specifically admitted or traverses herein. Further, he specifically denies the averments made in the paragraph 2 to 4 in the petition filed by the petitioner. Further, he states that as per Order 38 Rule 9 of CPC, the petition schedule property cannot be attached in a suit on promissory note when security has been given by the defendant and if attachment order has been passed the Court should raise the attachment. Further, he submits that the above said proposition was held by the Honourable High Court of Madras in 1998 (2) *MLJ*. Further, it has been submitted that the respondent has also cited the Judgment of Honourable High Court of Madras in 2015 (3) *LW* that when the defendant has furnished security to the Court in respect of the petition property, there is no need to attach the property. Further, he submits that this petition is not maintainable since the respondent has furnished the security for Rs.97,17,600/-. Further, he submits that he may reserves his right to file additional counter if necessity arises. Hence, he prays to dismiss the petition with costs.

4) The point for consideration is whether this petition has to be allowed or not?

ANSWER TO THE POINT:-

5) The petitioner is the plaintiff in the suit and he has filed the suit for recovery of money. Further, the petitioner has also filed the petition in I.A. No.2/2023 to pass an order for attachment before judgment in respect of petition mentioned properties.

Further, in the above said I.A. No.2/2023 the respondent has furnished security in the form of form 6. Further, this Court has also accepted the security furnished by the respondent.

6) The petitioner/plaintiff has filed this present application stating that the Order passed by this Court by accepting the security furnished by the respondent in I.A. No.2/2023 to be registered on the file of the Sub-Register, Thirupur Joint-II to avoid further encumbrance. Further, the main contention raised by the counsel for the petitioner is that in order to avoid further encumbrance, the security furnish by the respondent has to be sent to the Registrar office concerned for registration of the same. Further, the counsel for the petitioner had made an endorsement of no objection for accepting the form 6 security furnished by the respondent/defendant. In view of the said endorsement the form 6 security furnished by the respondent/defendant was accepted and recorded.

7) The respondent herein has filed counter stating that once the respondent furnishes security this Court shall not pass an order for attachment before judgment. To substantiate his claim, he submits the judgment passed by the Honourable High Court of Madras in 1998 (2) MLJ and in 2015 (3) LW.

8) Moreover, the Honourable Madurai Bench of Madras High Court in para of the judgment in *C.R.P.(MD).No.1117 of 2023 and C.M.P(MD).No.5369 of 2023* dated 26.04.2023 “*the trial Court to send suitable notice to the Sub-Registrar Officer stating that the property in question stands attached pursuant to order dated 28.02.2022 so that there is no fresh alienation or fresh encumbrance of the property offered as a security*”. Therefore, based on the above said judgment sending the Form 6 to the Sub-Registrar Thirupur Joint II Sub-Registrar office, with a direction to him to enter the same in the register would meet the ends of justice. Further, if such

order is passed multiplicity of proceedings would be avoided. Further, no prejudice would be caused to the respondent/defendant if this petition is allowed. Therefore, this Court is inclined to allow this petition. Accordingly, this petition is allowed.

In the result, this petition is allowed and a copy of the Form 6 furnished by the respondent/defendant shall be send to the Sub-Registrar Thirupur Joint-II SRO to register the same. Batta within three days.

Dictated to the steno-typist, transcribed by him corrected and pronounced by me in open Court on this the 29th day of August 2024.

PRINCIPAL DISTRICT JUDGE,
KARUR.