

(1998) 01 MAD CK 0033
In the Madras High Court

Letchumanan

APPELLANT

Vs

Karuppan

RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 9

Citation : (1998) 3 LW 646 : (1998) 2 MLJ 126

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Division Bench

Judgement

K.P. Sivasubramaniam, J.—The revision is directed against the order of the learned subordinate judge at Villupuram in I.A. No. 172 of

1997 in O.S. No. 665 of 1994 dated 30.4.1997.

2. An interim attachment was made as against the petitioner defendant as against the dues accumulated in his account with the Chengalvarayan Co-

operative Sugar Mills, Periasavalai and the attachment has been made for Rs. 40,908 petition in I.A. No. 172 of 1997 was filed by the defendant

under Order 38, Rule 9, C.P.C. praying for the raising of the attachment on the ground that he has borrowed money for the performance of the

marriage of his daughter and he has been depending only on the income from cultivation of cane and that in order to celebrate the marriage of his

daughter without any hindrance and hardship, he wanted to withdraw the amount from the Chengalvarayan Co-operative Sugar Mills. He has

further stated that he has got lot of landed properties and that he was providing immovable security so as to cover the amount due under the suit.

3. Neither sufficiency nor the genuineness of the immovable property shown as security by the defendant has been doubted by the learned trial

judge, but the said application has been rejected only on the ground that the plaintiff would be put to irreparable loss and hardship, if he is required

to realise the amount from immovable security. Except, this, no other reason has been given by the learned trial judge to reject the application

which was thus filed under Order 38, Rule 9, C.P.C.

4. A perusal of the said provision shows that the court shall order the attachment to be withdrawn when the defendant furnishes the security

required together with security for the costs of the attachment when the suit is dismissed. As stated earlier, when neither the sufficiency of the

security nor the genuineness of the security is doubted. In the said circumstances, the relief sought for under Order 38, Rule 9, CPC is mandatory

and the court is bound to pass a consequential order. Learned counsel for the petitioner also relies upon the judgment reported in N.R.

Thirtiverigadam Vs. Kaliannan, , Ratnam, J. (as he then was) held that the remedy provided for under Order 38, Rule 9, C.P.C. is in the nature of

an independent remedy and can be availed of by a defendant eyes after an order for attachment under Sub-rule (1) of Rule 6 of Order 38 has

been made. The provision was a beneficial one intended to give an opportunity to defendants who despite an order of attachment passed against

them are in a position to offer security for safeguarding the claims of plaintiff made in the suit and to pray for a withdrawal of the order of

attachment made already either over their other assets or moneys. As already stated, the petitioner has also pleaded that he was in need of money,

(which was already attached) for celebrating the marriage of his daughter and the said reason is not considered before passing the order.

5. The respondent remained absent even after service of notice and there is no representation on his behalf. Having regard to the circumstances

stated above the revision petition is allowed, No costs. Consequently no order is necessary in C.M.P. No. 9093 of 1997.