



CNR: KAHC010761812025

NC: 2026:KHC:39333  
MFA No. 8726 of 2025

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF JULY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR**

**MFA NO. 8726/2025 (CPC)**

**BETWEEN:**

JAYASHREE SIVAKUMAR  
AGED ABOUT 64 YEARS,  
WIFE OF SIVAJI SIVAKUMAR,  
RESIDING AT NO. 114/2,  
KATHA NO. 361/1/113/2/532,  
SOLUR, BENGALURU RURAL - 562 110.

...APPELLANT

(BY SRI. DHYAN CHINNAPPA., SENIOR COUNSEL FOR  
SRI. KASHYAP N. NAIK., ADVOCATE)

**AND:**

CHENNNARAYA V KODAGI  
SON OF SRI K.L VENUGOPAL,  
AGED ABOUT 63 YEARS,  
RESIDING AT 5214, CALIFORNIA STREET,  
SAN FRANCISCO, CA94118  
REPRESENTED BY HIS G.P.A HOLDER,  
SRI PRADEEP ESWARAPPA  
AGED ABOUT 57 YEARS,  
RESIDING AT NO. 268, 44<sup>TH</sup> CROSS,  
9<sup>TH</sup> MAIN, 5<sup>TH</sup> BLOCK, JAYANAGAR,  
BENGALURU 560 041.

...RESPONDENT

(BY SRI.A MAHESH CHOUDHARY., ADVOCATE)



**NC: 2026:KHC:39333**  
**MFA No. 8726 of 2025**

**CNR: KAHC010761812025**

THIS MFA FILED U/O.43 RULE 1(Q) OF THE CPC, AGAINST THE ORDER DATED 12.08.2025 PASSED ON I.A.NO. 1 IN O.S.NO.4424/2024 ON THE FILE OF THE XLII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-43), ALLOWING IA NO.1 FILED U/O.XXXVIII RULE 5 READ WITH SECTION 151 OF CPC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

### **ORAL JUDGMENT**

This appeal is preferred by the appellant, who is the defendant before the trial Court in O.S.No.4424/2025, aggrieved by the impugned order dated 12.08.2025 passed on I.A.No.1 in O.S.No.4424/2024 by the XLII Additional City Civil and Sessions Judge, Bengaluru.

2. The appellant herein is the defendant and the respondent is the plaintiff.

3. Brief facts of the case are as under:

Plaintiff filed the suit against the defendant seeking for recovery of a sum of Rs.1,16,28,853/- along with 12% annual interest from the non-payment date till the date of repayment to the plaintiff.



**CNR: KAHC010761812025**

3.1. Along with the suit, an application came to be filed by the plaintiff under Order 38 Rule 5 of CPC to attach 1/4<sup>th</sup> share of the defendant in property No.523 situated at New Diagonal Road, 3<sup>rd</sup> Block Jayanagar, Bangaluru before passing the judgment or to direct the defendant to furnish the security.

3.2. After service of summons, written statement was filed by the defendant admitting the relationship and also about the transfer of the amount of Rs.1,40,00,000/- to her account, but contended that this was not advanced to her for her personal financial needs, but was availed for the purpose of business to advance to one M/s. Coco Club LLP conducted by the defendant and her sister namely Samyukta Kuppula and therefore, she contended that she is not personally liable to repay the said loan. Several other contentions were taken.

3.3. Upon consideration of the application, the learned trial Judge agreed with the contentions of the plaintiff and allowed the application-I.A.No.1 filed under Order 38 Rule 5 of CPC attaching the property bearing No.523 situated at New Diagonal Road, 3<sup>rd</sup> Block Jayanagar, Bangaluru to an extent of



**NC: 2026:KHC:39333**  
**MFA No. 8726 of 2025**

**CNR: KAHC010761812025**

Rs.1,20,00,000/- or the defendant was directed to give security for the said sum.

4. Learned Senior Counsel Sri Dhyan Chinnappa appearing on behalf of learned counsel Sri. Kashyap N. Naik., for the appellant vehemently contends that the trial Court has not followed the proper procedure while passing the interim order of attachment of the property. It is contended that the order is perverse, illegal and arbitrary and ex-facie bad in law and is liable to be set aside. It is also contended that the plaintiff has not come before the Court with clean hands and has suppressed material facts by making false statements. It is also contended that the trial Court has not come to any conclusion that the defendant is attempting to alienate the properties to frustrate the claim of plaintiff. It is further contended by the Senior counsel that the trial Court has resorted to a drastic order without following the procedure contemplated under the CPC. The impugned order is without application of mind and hence, respondent/plaintiff is not entitled to the discretionary relief of the order under Order 38 Rule 5 of CPC. Several other contentions are raised.



CNR: KAHC010761812025

5. Learned counsel Sri A.Mahesh Choudhary undertakes to appear for the respondent, who is the plaintiff before the trial Court. After arguing the matter for some time, learned counsel for the respondent contends that if the Court were to be inclined to grant an interim order of staying the order of attachment, it may as well send the matter back to the trial Court for fresh adjudication to follow the process and procedure as contemplated under Order 38 Rule 5 (1) and (4) of CPC.

6. This Court is not inclined to delve into these contentions and observations made by the trial Court. This Court is inclined to set aside the order on the sole ground that the proper procedure as contemplated under Order 38 Rule 5 of CPC has not been followed by the learned trial Judge while attaching the property on the application-I.A.No.1 filed by the plaintiff. It would be relevant to extract Order 38 Rule 5 (1), (2), (3) and (4) of CPC, which reads as under:

***"5. Where defendant may be called upon to furnish security for production of property.-***

*(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the*



**CNR: KAHC010761812025**

*defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-*

*(a) is about to dispose of the whole or any part of his property, or*

*(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court:*

*the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.*

*(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.*

*(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.*



CNR: KAHC010761812025

*(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.*

7. It would also be relevant to extract Order 38 Rule 6 of CPC, which reads as under:

***"6. Attachment where cause not shown or security not furnished.-*** (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

*(2) Where the defendant shows such cause of furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit."*

8. Apparently, on bare perusal of the impugned order, it is seen that the trial Court has not followed the procedure as contemplated under Order 38 Rule 5 (1) and (4) of CPC.

9. Learned Senior Counsel Sri Dhyan Chinnappa relies upon a judgment of Co-ordinate Bench of this Court in the case



CNR: KAHC010761812025

of ***Krishnappa vs. Smt. K.N.Sridevi*** reported in ***ILR 2012 KAR 3328***, whereby this Court at paragraph No.17 held as under:

*"17. From the aforesaid decisions, it is clear that the object of Order 38 Rule 5 is to prevent the decree that may be passed from being rendered infructuous. The power under Order 38 Rule 5 should be exercised sparingly and with utmost caution otherwise it would become the instrument of oppression. It is a drastic power, which may not be granted on a mere assertion by the plaintiff that defendant is attempting to dispose of whole or part of his property or remove whole or any part of his property from the jurisdiction of the Court. Simple production of the language used in Order 38 Rule 5 will not meet the requirements for grant of an order of attachment before judgment. The affidavit must state the source of the information or apprehension. Before exercising the power under this Rule, the Court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant This would mean that the Court should be satisfied that the plaintiff has a prima facie case. If the averments made in the plaint and the documents produced in support of it do not satisfy the Court about the existence of a prima facie case, the Court will not go to the next stage of examining*



**CNR: KAHC010761812025**

*whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the said provisions as a leverage for coercing the defendant to settle the suit claim should be discouraged. Where a small portion of the property belonging to the defendant is being disposed off, no inference can be drawn in the absence of other circumstances that alienation is necessarily to defraud or delay the plaintiff's claim. The Court would not be justified in issuing an order of attachment before judgment merely because it thinks that no harm would be done thereby or the defendant would not be prejudiced. The Court should also bear in mind that any attachment order passed without complying with sub-Rule (1) is void. If the Court inspite of sub-Rule (4) passes an order in a cavalier manner, such an order must be struck down."*

10. In view of the said discussions of the law laid down by the co-ordinate Bench of this Court by relying upon several judgments including the Hon'ble Apex Court with regard to the procedure to be followed while considering an application under Order 38 Rule 5 for attachment, the necessary procedure has



CNR: KAHC010761812025

NC: 2026:KHC:39333  
MFA No. 8726 of 2025

to be followed which has not been done in the present case on hand. Under the circumstances, the impugned order is not sustainable and the same requires to be set aside.

11. Accordingly, I passed the following:

**ORDER**

- i) This appeal is ***allowed***.
- ii) Impugned order dated 12.08.2025 passed on I.A.No.1 in O.S.No.4424/2024 by the XLII Additional City Civil and Sessions Judge, Bengaluru is hereby set aside.
- iii) The trial shall decide the application-I.A.No.1 afresh by following due process of law.
- iv) It is needless to mention that application shall be considered in accordance with law by providing reasonable opportunity to both the parties.

Pending applications, if any, stand disposed of.

Ordered accordingly.

**Sd/-  
(PRADEEP SINGH YERUR)  
JUDGE**