



C.M.A(MD)No.365 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.06.2026

PRONOUNCED ON: 10.07.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.365 of 2026

and

C.M.P.(MD)No.3461 of 2026

T.Mahesh : Appellant/Respondent/Defendant

Vs.

Shanthi : Respondent/Petitioner/Plaintiff

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(Q) C.P.C., against the fair and decretal order, dated 15.12.2025 in I.A.No.1 of 2025, in O.S.No.233 of 2025, on the file of II Additional District Judge, Tiruchirappalli.

For Appellant : Mr.K.Prabhakar

For Respondent : Mr.R.Vigneshwaran



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JUDGMENT

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This Civil Miscellaneous Appeal is directed against the order passed in I.A.No.1 of 2025 in O.S.No.233 of 2025, dated 15.12.2025, on the file of II Additional District Court, Trichirappalli, attaching the petition mentioned properties before the judgment.

2. The appellant is the respondent/defendant. The respondent as petitioner/plaintiff filed a suit in O.S.No.233 of 2025 for recovery of Rs.1,65,50,000/-- due on the basis of the cheques issued by the defendant in favour of the plaintiff.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the original petition.

4. The petitioner, invoking Order 38 Rule 5 C.P.C., filed a petition seeking attachment of the petition mentioned properties before the judgment in I.A.No.1 of 2025. The respondent filed a counter statement opposing the said petition. The respondent has also filed a petition in I.A.No.2 of 2025 in I.A.No.1 of 2025 for reception of documents and the



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said petition came to be allowed on 05.08.2025. Thereafter, the learned trial Judge, on 15.12.2025, has passed the impugned order and the same is extracted hereunder for better appreciation:

“The petitioner called Presented. The Respondent side no representation. This suit is filed for recovery of Rs. 1,65,50,000/-. The 1st document in the plaint is the cheque issued by the Defendant in favour of the plaintiff dated 15.03.2023. The cheque was dishonoured on 18.03.2024. The cheque bounce case filed by the Plaintiff before the Judicial Magistrate No.2, Tiruchirapalli in S.T.C.No. 5887/2023. Document from 5 to 12 are teh IT Returns and Statements of accounts maintained by the Petitioner/Plaintiff in respect of Defendants Transactions. The Document no:13 is the settlement deed. The Presumption under 118 of NI Act is in favour of the Plaintiff. The counter filed by the Respondent/Defendant perused and no ducmnet filed.

The Petitioner/Plaintiff filed Encumbrance Certificate as Document No.14. Prima facie case exists in favour of the Petitioner. No undertaking given by the Respondent. Hence this court inclined to attach the property mentioned in this petition on payment of Batta. Hence this petition is allowed accordingly. Otherwise the Petitioner/Plaintiff cannot be compensated in any manner.”

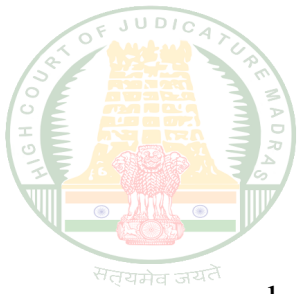


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5. A cursory perusal of the above said order, as rightly contended by the learned Counsel for the respondent, would reveal that it is a cryptic and non-speaking order. Though the learned trial Judge has referred to the counter filed by the respondent, he has not chosen to adverted to, much less considered the specific objections raised therein. Moreover, the learned trial Judge has observed that the respondent had not filed any documents. As already pointed out, he had filed an application in I.A.No.2 of 2025 for reception of documents and the same had been allowed as early as on 05.08.2025 ie., more than four months prior to the impugned order.

6. The learned Counsel for the petitioner would contend that though the petition in I.A.No.2 of 2025 for reception of documents was allowed by the learned trial Judge, the respondent did not mark those documents in the proceedings relating to the application for attachment before judgment. As rightly pointed out by the learned Counsel for the respondent, the trial Court has relied upon and referred to the documents produced by the plaintiff along with the plaint, though they were also not



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marked in the said proceedings. More importantly, the petitioner had also not chosen to exhibit any document in support of the petition for attachment before judgment, but the trial Court itself has relied upon the plaint documents while arriving at a conclusion.

7. Before proceeding further, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Raman Tech., and Process Engg., Co., and Others Vs. Solanki Traders*** reported in ***2008(2) SCC 302***, wherein the Hon'ble Apex Court has specifically held that the power under Order 38 Rule 5 C.P.C., is a drastic and extraordinary power and such power should not be exercised mechanically or merely for the asking and the same should be used sparingly and strictly in accordance with the Rule. The Hon'ble Apex Court has also observed that the purpose of Order 38 Rule 5 C.P.C., is not to convert an unsecured debt into a secured debt and any attempt by a plaintiff to utilize the provision of Order 38 Rule 5 C.P.C., as a leverage for coercing the defendant to settle the suit claim should be discouraged and the relevant passage is extracted hereunder:

“ 5. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the



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defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlement, under threat of attachment.

6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under [Order 38 Rule 5 CPC](#). Courts should also keep in view the principles relating to grant of attachment before judgment.”

8. It is pertinent to note that, before invoking the provisions of Order XXXVIII Rule 5 C.P.C., the Court must satisfy itself, on the basis of the materials available on record, that the defendant, with the intent to obstruct or delay the execution of any decree that may ultimately be passed against him, is about to dispose of the whole or any part of his



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property or is about to remove the same from the local limits of the jurisdiction of the Court. In the case on hand, the impugned order does not disclose any finding that the respondent/defendant intended to obstruct or delay the execution of a prospective decree by disposing of or removing his property. Even assuming that the petitioner/plaintiff has established a prima facie case, the same, by itself, is not sufficient to invoke the provisions of Order XXXVIII Rule 5 C.P.C. The observation of the learned trial Judge that "otherwise the petitioner/plaintiff cannot be compensated in any manner" is wholly insufficient to satisfy the mandatory requirements of the said provision. The Court is required to record its satisfaction, regarding the mandatory requirements, as contemplated under Order XXXVIII Rule 5 C.P.C.

9. More importantly, as rightly pointed out by the learned Counsel for the respondent, the learned trial Judge before ordering attachment, is duty bound to call upon the defendant either to furnish security for the suit claim or to show cause why the security should not be furnished. The impugned order does not indicate that any such direction was issued to the respondent/defendant to furnish security or to show cause before



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ordering attachment nor does it assign any reason for dispensing with any such requirement.

10. The learned counsel appearing for the petitioner/plaintiff would contend that, even assuming that no such direction had been issued before ordering attachment, the same would at best amount to a procedural irregularity and not an illegality vitiating the order.

11. Order 38 Rule 5(4) C.P.C., contemplates that if an order of attachment is made without complying with the provisions of the Sub-Rule (1) of this Rule, such attachment shall be void. Considering the impugned order, it is clearly evident that the trial Court failed to comply with mandatory requirements of Order 38 Rule 5 C.P.C., and more importantly, sub Rule (1) of Rule (5) and as such, the impugned attachment order cannot legally be sustained. Though the learned Counsel for the petitioner/plaintiff advanced elaborate submission on the merits of the claim, since the impugned order itself stands vitiated for the non-compliance with the mandatory statutory requirements this Court is not inclined to go into the same. In the above circumstances, this Court

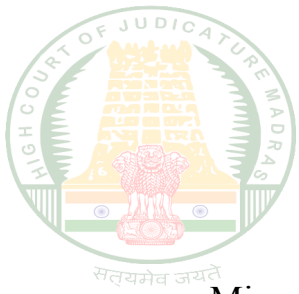


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has no other option, but to set aside the impugned order and remit the matter to the trial Court for fresh consideration of the petition filed under Order 38 Rule 5 C.P.C., after affording sufficient opportunity to both parties and in accordance with law. In the facts and circumstances of the case, the parties are to be directed to bear their own costs.

12. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order passed in I.A.No.1 of 2025 in O.S.No.233 of 2025, dated 15.12.2025, on the file of II Additional District Court, Trichirappalli is set aside and the matter is remitted to the trial Court for fresh consideration. The learned trial Judge is directed to conduct a proper enquiry, affording opportunity to both parties to adduce evidence, if any and thereafter consider and dispose of the application afresh, strictly in accordance with the procedure prescribed under Order XXXVIII Rule 5 C.P.C. and on its own merits, uninfluenced by any of the observations made in this judgment. The learned trial Judge shall endeavour to dispose of the application within a period of four weeks from the date of receipt of a copy of this judgment. Consequently, the connected Civil



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Miscellaneous Petition is closed. The parties are directed to bear their own costs.

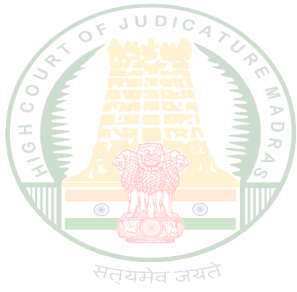
10.07.2026

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. II Additional District Court, Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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