

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 29TH DAY OF NOVEMBER, 2018

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

A. No.6393 of 2018

in

C.S. No.582 of 2018

CS.NO.582/2018:

S.Ramesh Babu,
S/o. Subba Reddy,
No.11, 1st Street,
Dr.Subburaya Nagar,
Kodambakkam
Chennai - 600 024.

...Plaintiff

-Versus-

A.Baskar,
S/o.Arani Jayachandra Reddy
12-47, Sinivasa Apartments,
Giriappa Road, T.Nagar,
Chennai - 600 017.

...Defendant

A.NO.6393/2018:

S.Ramesh Babu
S/o.Subba Reddy,
No.11, 1st Street,
Dr.Subburaya Nagar
Kodambakkam
Chennai - 600 024.

... Applicant/Plaintiff

-Versus-

A.Baskar,
S/o.Arani Jayachandra Reddy
12-47, Sinivasa Apartments,
Giriappa Road, T.Nagar,
Chennai - 600 017.

...Respondent/Defendant

Application praying that this Hon'ble Court be pleased direct the respondent/defendant to furnish the security within a peculiar period in the suit claim for Rs.66,55,397/- (Sixty six Lakhs fifty five thousand three hundred Ninety seven only) which attached before judgment

in schedule property in the above suit pending disposal of suit.

This Application coming on this day before this court for hearing and the Court made the following order :

This application is filed seeking a direction to the respondent/defendant to furnish security for the suit claim of Rs.66,55,397/-.

2. The case of the applicant/plaintiff is that the respondent is the owner of the property measuring an extent of 25 cents in S.No.38/2B situated at Sengadu Village, Sriperumbudur Taluk, Kancheepuram District and he has agreed to sell the property to the plaintiff, for a total consideration of Rs.37,00,000/- and received a sum of Rs.17,00,000/-, towards advance on 12.02.2015. During the month of March 2015, the plaintiff paid another sum of Rs.20,00,000/- and got General Power of Attorney, dated 11.03.2015. On 13.04.2015, the respondent obtained another sum of Rs.2,00,000/- from the plaintiff for his family expenses, but, without the knowledge of the plaintiff, the respondent cancelled the Power of Attorney deed on 27.06.2017. Thereafter, the plaintiff issued a legal notice dated 14.07.2017 to the respondent, since the respondent did not come forward to repay the amount and the present suit has also been filed.

3. It is further stated that in paragraph No.9 of the affidavit filed in support of this application that the only source of security for the respondent is the schedule mentioned property and after cancellation of the General Power of Attorney, unilaterally, he might sale the land to a third party to defeat the right of his claim. Hence, the plaintiff seeks the defendant to furnish security, failing which, he is entitled for attachment before Judgment.

4. The learned counsel for the applicant/plaintiff would state that the respondent himself accepts execution of sale agreement and Power of Attorney and unilateral cancellation of documents. The applicant has proved that the respondent in order to defeat the claim of the applicant is trying to alienate his only property.

5. The learned counsel for the respondent by referring the counter affidavit filed by the respondent, denied the allegations of the plaintiff and he has stated that the respondent had borrowed only a sum of Rs.10,00,000/- from the plaintiff and he was charging exorbitant interest at the rate of 5% per month. With great difficulty he had made several payments to the plaintiff, for which cash vouchers dated 19.07.2014, 20.08.2014, 27.8.2014, 16.10.2014, 23.03.2015, 02.05.2015 were issued and accepted the repayment of Rs.2,70,000/-. It is further stated that in order to secure the said loan transaction, the plaintiff

had obtained the Suit sale agreement dated 12.02.2015 and Power of Attorney dated 11.03.2015. The learned counsel for the respondent relied on the decision of the **Supreme Court reported in 2007(3) Scale 419 and judgment of this Court reported in 2009(1) Madras Law Journal 1324** in support of his case.

6. Heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

7. In the instant case, the applicant has filed a suit for recovery of money based on the sale agreement dated 12.02.2015. In the affidavit filed in support of the application nothing has been mentioned about the previous transactions of the plaintiff with the respondent. The cash vouchers mentioned in paragraph No.9 of the counter affidavit would show that the respondent has been repaying the loan amount from July 2014 onwards, which is not disputed by the other side. Hence, the case of the applicant that on basis of the sale agreement dated 12.02.2015, the respondent is liable to pay the suit claim creates a doubt.

8. The Supreme Court reported in 2007 (3) Scale 419, in

<https://hcservices.ecourts.gov.in/hcservices/0.4>, held as follows :

" 4.The object of supplemental

proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of Order 38 Rule 5 CPC in particular, is to prevent any defendant from defeating the realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The Scheme of Order 38 and the use of the words 'to obstruct or delay the execution of any decree that may be passed against him' in Rule 5 make it clear that before exercising the power under the said 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 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 whether the interest of the plaintiff should be protected by exercising power under Order 38 Rule 5 CPC. It is well-settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that

even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case."

9. Similar view is taken by this Court in the subsequent decision reported in **2009(1) MADLJ 1324**, relied upon by the learned counsel for the respondent. In the affidavit except making bald allegations that the respondent will sell the land to the third party to defeat his claim, but, nothing has been stated by the applicant what are the steps that are taken by the respondent to sell the property. Keeping in view, the decision of the judgments referred supra and taking note of the facts of this case, this Court is of the opinion that the applicant is not entitled for the order in this application.

12. In the result, this application stands dismissed.

sd/- M.K.K.S.J
29.11.2018

//Certified to be true copy//

Dated at Madras this the day of 2019.

TE/02/05/2019

COURT OFFICER(O.S.)

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