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C.R.P.(PD).No. 642 & 835 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2025

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**C.R.P.(PD).Nos. 642 & 835 of 2022**

**&**

**C.M.P.Nos.3285 & 4229 of 2022**

**CRP.No.642 of 2022:**

R.Ravinderkumar

...Petitioner

Vs.

1.K.Ponnammal

2.A.P.Ravi

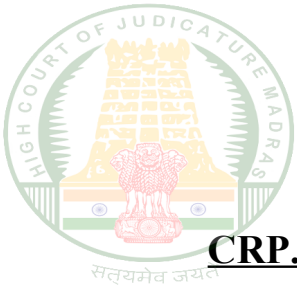
...Respondents

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India, against IA.No.5 of 2020 in Summary Suit OS.No.677 of 2020 on the file of the XXI Additional City Civil Court, Allikulam dated 29.10.2021.

For Petitioner : Mr. Nandhakumar

For Respondent 1: No Appearance.

For Respondent 2: Mr. P.Chandrasekar



C.R.P.(PD).No. 642 & 835 of 2022

**CRP.No.835 of 2022:**

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R.Ravinderkumar

...Petitioner

Vs.

1.A.P.Ravi

2.K.Ponnammal

...Respondents

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India, against IA.No.3 of 2020 in Summary Suit OS.No.677 of 2020 on the file of the XXI Additional City Civil Court, Allikulam dated 18.11.2021.

For Petitioner : Mr. Nandhakumar

For Respondent 1: Mr. P.Chandrasekar

For Respondent 2: No Appearance.



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## **ORDER**

The plaintiff is the revision petitioner in both the revision petitions.

2.C.R.P.No.642 of 2022 is filed challenging the order passed in I.A.No.5 of 2020 in O.S.No.677 of 2020. This application is filed by the defendant for the grant of unconditional leave. C.R.P.No.835 of 2022 is filed challenging the order passed in I.A.No.3 of 2020 in O.S.No.677 of 2020, which is an application filed by the plaintiff seeking attachment before the Judgement.

3.The suit has been filed by the plaintiff for a recovery of a sum of Rs.69,12,055.74/-, together with future interest at 3 % per month from the date of the suit till date of realisation. It is the case of the plaintiff that he is carrying on business in finance and he had several financial transactions with the defendants for many years. In the month of July 2019, the 1<sup>st</sup> defendant requested the plaintiff for a loan of Rs.58,00,000/-. On 22.07.2019, the loan was also given to the 1<sup>st</sup>



defendant and a promissory note was executed by him on the same day.

However, contrary to the promise no payment was made.

4. The plaintiff issued a legal notice dated 06.12.2019 calling upon the defendants to repay the same. The 1<sup>st</sup> defendant was served however, he did not issue a reply and the notice sent to the 2<sup>nd</sup> defendant was returned with an endorsement "unclaimed". Therefore, the plaintiff filed the suit.

5. Along with the suit, the plaintiff filed I.A.No.3 of 2020 seeking a direction to the defendants to furnish security for the suit amount failing which to order attachment before Judgement of immovable property belonging to the defendants.

6. In the affidavit filed in support of the said application apart from narrating the facts set out in the plaint he would contend that he apprehends that with an intent of cheating the plaintiff the defendants were taking steps to alienate the immovable property. Therefore, the



plaintiff had sought for injunction as well as attachment before  
Judgement.

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7. The 2<sup>nd</sup> defendant on being served with the notice in the suit had after giving her notice of appearance filed a leave to defend application on 07.03.2020. The 2<sup>nd</sup> defendant had clearly and categorically denied the execution of the promissory note dated 22.07.2019 and also claimed that she was coerced in signing the letter. That apart, it was the 1<sup>st</sup> defendant who has borrowed the money and not the 2<sup>nd</sup> defendant. Therefore, she is not liable to repay the same. She would therefore submit that since these contentions form triable issues leave should be granted to her to defend the suit.

8. In the counter the only defense that has been raised by the plaintiff is that the defense is illusory one and since the suit is based on promissory note an under Chapter suit was maintainable and the 2<sup>nd</sup> defendant having admitted her signature in the mortgage letter, cannot renege on the same.



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9. The Trial Court after considering the pleadings, the arguments and the documents ultimately, held that the defense put forward by the 2<sup>nd</sup> defendant is a triable issue and therefore a leave should be granted. The learned Judge had also observed that since the very execution of the guarantee deed has been denied the same has to be established in evidence. That apart, the affidavit filed in support of the petition under Order XXXVII Rule 3(5) contains a rather vague and general allegations and there was no specific allegation that the 2<sup>nd</sup> defendant was proposing to dispose of the immovable property. Therefore, the request for furnishing security failing which the order of attachment was also rejected.

10. Challenging the said orders, the Civil Revision Petitions have been filed.

11. Heard the learned counsels and perused the records.



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12. The defendant has denied the execution of the promissory note and she has also contended that her signature in the guarantee deed dated 22.07.2019 has been obtained by coercion. Though during the arguments the plaintiff would state that the sum of Rs.58,00,000/- has been given under various promissory notes, in the plaint it has been stated as follows:

*“The plaintiff granted the loan of Rs.58,00,000/- (Rupees Fifty Eight Lakhs Only) under a promissory note dated 22.07.2019 executed by the first defendant at T.Nagar, Chennai”.*

13. That apart, a perusal of a copy of the guarantee deed which has been submitted for the scrutiny of this Court it is seen that on 22.07.2019, the date on which the deed of guarantee has been executed only a sum of Rs.5,00,000/- has been disbursed. It is only thereafter that a sum of Rs.53,00,000/- has been disbursed. It is also not clarified anywhere in the plaint as to how huge sum of Rs.58,00,000/- has been



extended without obtaining security.

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14. In the course of the argument, it is also stated that the 2<sup>nd</sup> defendant had already borrowed a money from the plaintiff, which she has not repaid. Therefore, all of these give a raise to a triable issue.

15. The Trial Court has relied upon the Judgement of the Hon'ble Supreme Court as well as this Court, wherein what is a triable issue has been discussed. Since substantial defense has been made out, the order granting leave to defend is very much in order and cannot be countenanced.

16. As observed in the discussion with reference to leave to defend, there appears to be a lot of suspicious circumstances surrounding the execution of the alleged promissory notes as well as guarantee deed. No doubt the 2<sup>nd</sup> defendant has not chosen to contest the application seeking attachment before Judgement and has also not participated in the proceedings before the Court, however, this Court



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cannot shut its eyes to the above facts. The affidavit filed in support of the application for attachment before Judgement is also rather vague and in these circumstances since the very borrowal is denied by the 2<sup>nd</sup> defendant and as the plaintiff's pleading and the documents particularly the guarantee letter gives raise to suspicion, the order dismissing the application for attachment before Judgement is very much in order and I see no reason to interfere with the same.

17. Accordingly, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

**13.02.2025**

Index : Yes/No  
Internet : Yes/No

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To

The XXI Additional City Civil Court,  
Allikulam.



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*C.R.P.(PD).No. 642 & 835 of 2022*

**P.T. ASHA, J,**

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**13.02.2025**