



A.No.3110 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

A.No.3110 of 2025

in

C.S.No.147 of 2025

1. N.Balajivenkat

2. B.Vijayalakshmi

... Applicants

Vs.

1. Bhuvaneshwari Udayakumar

2. Smt.Anitha

3. Smt. Radhika

4. Norton Granites & Properties (P) Ltd.,
(A company registered under the
Companies Act, 1956)
Registered Office at No.18,
Manikeswari Street, Kilpauk,
Chennai – 600 010.

... Respondents

PRAYER: Application filed under Order XIV Rule 8 of O.S Rules r/w. Order XXXVIII Rule 5 of CPC, 1908, to direct the respondents/defendants to furnish security to the extent of the suit claim of Rs.2,17,50,000/- within the time fixed by this Court, failing which the order of attachment before Judgment of the properties.



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A.No.3110 of 2025

For Applicants : Dr.P.Vasudevan
For Respondent : Mr.G.Mohanakrishnan for R1 to R4

ORDER

This application has been filed by the petitioners/plaintiffs to direct the respondents/defendants to furnish security to extend a suit claim of Rs.2,17,50,000/- within a time fixed by this Court, failing which, the order of attachment of the properties described in the suit schedule, before the Judgment.

2. The case of the petitioners/plaintiffs is that the petitioners/plaintiffs filed a Suit for recovery of money as against the respondents/defendants to the tune of Rs.2,17,50,000/- based on an affidavit-cum-understanding dated 01.10.2022. During pendency of the Suit, the respondents/defendants are taking all measures to sell the immovable properties. In fact, one Udaya Kumar, who was the Managing Director of the fourth defendant is liable to pay the loan amount. However, the other respondents being the Directors of the said Company have already signed in the affidavit-cum-understanding dated 01.10.2022. Now, the respondents/defendants are taking all measures to sell the immovable properties left by Udaya Kumar as well as owned by



A.No.3110 of 2025

the fourth defendant/Private Limited Company. Therefore, the

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applicants filed this application to grant interim order to furnish the security to extend on the suit claim failing which the order of attachment before the Judgment of the properties described in the suit schedule.

3. The case of the respondents is that they denied the execution of alleged affidavit cum declaration. In the year 2020, the plaintiffs threatened late Udaya Kumar as well as family members and obtained signature on several blank papers, non judicial stamp papers, promissory note, cheque, etc., citing that the same are normal procedure for them. The said affidavit-cum-understanding dated 01.10.2022 was suddenly prepared by the petitioners/plaintiffs for the purpose of grabbing the property. There are several corrections in the affidavit-cum-understanding, but there is no countersign or acknowledgement by the parties and the said declaration has not been attested by any witnesses. Even as per the affidavit, the respondents have to pay the amount on or before 31.12.2022. But the plaintiffs have filed the Suit after three years before the limitation period. The averments in the affidavit are stoutly denied. The respondents are not taking any steps to sell the immovable property in Kilpauk since the same is the house in which they are



A.No.3110 of 2025

residing. The said property is no way connected with the alleged

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commercial transaction between the applicants and late Udaya Kumar.

There are no ingredients to fulfill the conditions mentioned under Order 38 Rule 5 of CPC and the applicants have not even mentioned the estimated value of the property and no documents filed to show that the property belongs to the respondents. Therefore, this application is liable to be dismissed.

4. This Court heard both sides and perused records.

5. In this case, the petitioners /plaintiffs have filed the main suit for the relief of recovery of money as against the respondents, based on the affidavit-cum-declaration dated 01.10.2022. The said execution of affidavit-cum-declaration has been denied by the respondents. Even, according to the affidavit, one Udaya Kumar, in between 2016 to 2018, had borrowed money in the capacity of Managing Director of M/s.Norton Granite and Properties Limited by executing promissory note and cheque from M/s.Anugraha Foundation Properties headed by Vijayalakshmi w/o. N.Balaji Venkat and the said Udaya Kumar in between 2016 and 2018 started making some payments towards interest



A.No.3110 of 2025

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and not able to pay towards the principal amount and thereafter some of the words typed were deleted. For the outstanding amount borrowed by Udaya Kumar, the executors, namely, Udaya Kumar, Anitha and Radhika had executed the affidavit whereas all the parties mentioned in the affidavit have not signed in each and every page of the affidavit. Only two signatures were found in all the pages, that too in the last page, the signature was written over the seal. Therefore, the main document relied on by the applicants itself was under some suspicious circumstances. Therefore, it has to be proved through Trial.

6. The applicants have not produced any original document signed by Udaya Kumar and there is no mention about the date of borrowal of the amount. More over, in order to attract the conditions made in Order 38 Rule 5 of CPC, there are no materials and the affidavit must fullfil the conditions mentioned in Order 38 Rule 5 of CPC. In this case, there are no averments to fullfil the condition mentioned in Order 38 Rule 5 of CPC. There is no specific averment to satisfy the Court by way of an affidavit or otherwise that the defendants with an intention to obstruct the execution of any decree that may be passed against the applicants/Plaintiffs, the respondents are about to dispose of the whole or



A.No.3110 of 2025

any part of their property or are about to remove whole or from local elements of the jurisdiction of Court. Further, there is no mention about the estimated value of the property, therefore, the conditions under Order 38 Rule 5 of CPC have not been complied. Therefore, for the reasons stated above, the petitioner is not entitled to any relief through this petition. Hence, this petition deserves to be dismissed.

Accordingly, this application is dismissed.

12.09.2025

dh

Index: Yes/No

Internet: Yes/No



WEB COPY



A.No.3110 of 2025

P.DHANABAL. J.

dh

A.No.3110 of 2025

12.09.2025