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CRP. No.2524 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.06.2025**

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP. No.2524 of 2024

and CMP. No.13245 of 2024

N.Sivananth

Petitioner

Vs

R.Aatheswaran

Respondent

PRAYER: This Civil Revision Petition under Article 227 of the Constitution of India, to set aside the order dated 11.03.2023 made in I.A. No.2 of 2023 in O.S. No.464 of 2023 on the file of the Additional District Court, Chengalpattu and allow the Civil Revision Petition.

For Petitioner : Mrs.Hema Sampath,
Senior Counsel for
Mrs.K.Sridevi

For Respondent : Mr.M.Himavanth

ORDER

The plaintiff/revision petitioner aggrieved by the dismissal of Application under Order XXXVIII, Rule 5 of CPC is before this Court by way of the present Civil Revision Petition.



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2. I have heard Mrs.Hema Sampath, learned Senior Counsel for Mrs.K.Sridevi, learned counsel for the petitioner and Mr.Himavanth, learned counsel for the respondent.

3. The learned Senior Counsel Mrs.Hema Sampath, would submit that the suit has been filed for recovery of money and in order to protect and secure the suit claim, an Interlocutory Application was taken out for attachment before the Application invoking provisions under XXXVIII, Rule 5 of CPC. The learned Senior Counsel would invite my attention to the plaint averments as well as counter affidavit filed by the respondent before the Trial Court in the Order XXXVIII, Rule 5 Application and state that there is a clear indication that the defendant is trying to move away from the jurisdiction of the Court. Hence, she would contend the order dismissing the Application under Order XXXVIII, Rule 5 CPC, ought to be set aside and reversed.

4. Per contra, Mr.Himavanth, learned counsel for the respondent/defendant would submit that the plaint documents do not disclose the liability of the respondent/defendant to the tune of approximately Rs.90 lakhs and the payments made even according the statement of account which has been relied on by the petitioner/plaintiff



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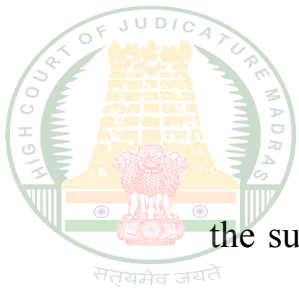
are only to Private Limited Company which is a separate legal entity.

However without making a claim against the said Company, the suit has been laid against the individual viz., the respondent/defendant.

5. He would further rely on the decision of Hon'ble Supreme Court in *Raman Tech and Process Engineering Company and another Vs. Solanki Traders*, reported in (2008) 2 SCC 302, where the Hon'ble Supreme Court has held that power under Order XXXVIII, Rule 5 should not be exercised for the mere asking and unless prima faice case establishing the requirements of any of the limbs of Order XXXVIII, Rule 5 of CPC, is made out.

6. I have carefully considered the submissions advanced by the learned Senior Counsel as well as the learned counsel for the respondent.

7. On going through the plaint, I find that the suit that has been filed for recovery of money for a sum of Rs.93,50,000/- together with interest. It is the specific case of the plaintiff that the defendant has been running a chit business and being family friends, the petitioner transferred monies by way of NEFT transactions and also cash transactions and it is only in respect of the chit business and monies invested by the plaintiff,



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the suit has been filed. It is also seen that the defendant's cheques have been presented for payment and the cheques have been dishonoured and the said cheques are also exhibited as suit documents. However, the case of the respondent/defendant is that the chit business being taken care of by his father and only because of the ill health of his father, the respondent was temporarily taking care of the business and in any event, it is a Private Limited Company and no liability can be fastened on the respondent/defendant. However from the reading of the counter affidavit, I am able to see that the respondent/defendant has not denied the signatures in the cheques that have been filed as plaint documents.

8. It is also the specific contention of the respondent that the house of the respondent was ransacked and blank cheques were taken away from his house and some of those cheques were misused in order to file the present suit. I also find that the respondent has stated that the business did not run as expected and because of default committed by various subscribers, the business suffered heavily. Equally, the respondent has also stated that some monies were borrowed from the plaintiff, but however, the same have been repaid. In any event, the liability of Rs.93,50,000/- is stoutly disputed. These are matters for trial and unless the parties lead oral and documentary evidence, the Trial Court



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will not be in a position to find out the real truth as to whether the case of the plaintiff is genuine or whether the defence taken by the respondent/defendant is acceptable in order to reject the claim of the plaintiff.

9. At the stage of an Application under Order XXXVIII, Rule 5 CPC, as held by the Hon'ble Supreme Court, the Trial Court has to see whether a case has been made out requiring the respondent/defendant to furnish security and in default, suffer an order of attachment of the property which is sought to be attached. In the case before the Hon'ble Supreme Court, the Hon'ble Supreme Court found that there was a Bank Statement showing that a sum of Rs.99,200/- was due from the defendants and under such circumstances, the Hon'ble Supreme Court held that a prima facie case had not been made for invocation under Order XXXVIII, Rule 5 which is an extraordinary power.

10. However, in the facts of the present case, even from the reading of the counter affidavit, it is clear that the respondent/defendant had some role to play in the chit business and admittedly, cheques issued by him though sought to be explained by the respondent/defendant, have



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been dishonoured and based on that the suit has been laid. Further, I find that the respondent/defendant has also stated at paragraph No.14 of the counter affidavit that there is a settlement of the property by the parents in favour of the respondent/defendant and he has never tried to alienate the property. However, the learned counsel for the respondent Mr.Himavanth, would submit that the said statement has been made only in the nature of an undertaking. He would further submit that if the suit is directed to be disposed of expeditiously, the undertaking can be recorded till the disposal of the suit.

11. In view of the above, the statement of the respondent/defendant that the property namely New Door No.33 (Old Door No.58/A), MMTC Colony, Nanganallur, Chennai 600 061, shall not be dealt with/alienated or encumbered pending disposal of the suit is recorded. The Trial Court viz., the Additional District Court Chengalpattu shall dispose of the suit within a period of four (4) months from the date of receipt of the copy of the order and it is made clear that until such time, the respondent shall not alienate the schedule mentioned property.

12. With these observations, the Civil Revision Petition is disposed. Connected Miscellaneous Petition is closed. No costs.



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To:

The Additional District Judge,
Chengalpet.

P.B.BALAJI, J.,

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