



C.M.A.No.2612 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2025

CORAM:

THE HONOURABLE **Mrs. JUSTICE R.KALAIMATHI**

C.M.A.No.2612 of 2023

and

CMP.No.24027 of 2023

1.S.Venkatachalam
2.V.Manikandan

.. Appellants/Defendants

vs.

E.Shankar

... Respondent/Plaintiff

PRAYER: Civil Miscellaneous Appeal is filed under Order 41 Rule 1 of C.P.C. to set aside the impugned order dated 07.09.2023 made in I.A.No.1 of 2021 in O.S.No.7222 of 2021 on the file of XX Additional District and Sessions Court, City Civil Court, Allikulam, Chennai.

For appellants : Mr.K.V.OM Prakash

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Order passed in I.A.No.1 of 2021 in A.S.No.7222 of 2021 on the file of the XX Additional District and Sessions Court, City Civil Court, Allikulam, Chennai.



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2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. In the details of the affidavit, it is stated that the defendants are father and son. They have acquaintance with the petitioner/ plaintiff for the past few years. The petitioner /plaintiff and the respondents/defendants had a good relationship, and they had financial transactions. The respondents/defendants used to borrow money from the petitioner/plaintiff for their business purposes and repaid promptly.

3.1. In the first week of June 2020, the respondents/defendants approached the petitioner for a loan amount of Rs.20,00,000/- in order to purchase the share from the co-owners of Udayam Theatre Complex, Ashok Nagar, Chennai. The petitioner gave a loan Rs.20,00,000/- in the second week of June 2020 to the respondents/defendants. The respondents promised to repay the amount within a period of six months with interest at 24% p.a.

3.2. However, they did not repay the said amount. After repeated requests, the respondents /defendants issued four cheques towards



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principal amount with interest. Two cheques for a sum of Rs.10,00,000/- each and one cheque for a sum of Rs.5,00,000/- and another cheque for Rs.4,00,000/- was also issued by the respondents to the petitioner. The said amount was given through four cheques by the respondents. The said cheques were presented for collection and they were returned as account closed, insufficient funds from the respondents. The petitioner caused to issue a legal notice to the respondents on 22.04.2021 which was received by them on 24.04.2021 and gave a reply on 04.05.2021.

3.3 The respondents are taking steps to dispose off the property mentioned in the petition. If the said property is disposed off, then the petitioner will not in a position to realise the condition. The respondents do not have any other means to settle the claim. Therefore, the respondents be directed to furnish security to the extent of suit claim. Failing which, the property 'C' schedule to be attached. Hence, this petition.

4. Details of counter of the respondents No.1 & 2 given in brief :

There was transaction between the petitioner/plaintiff and the respondents/defendants in the year 2018-2019. The respondents received a sum of Rs.37,00,000/- as hand loan from the petitioner through bank. The respondents paid a sum of Rs.40,00,000/- inclusive of interest and the



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said loan was closed. At that point of time, 26 cheques and two promissory notes were given as security for loan advanced by the petitioner during the year 2018. The said cheques and promissory notes were not returned by the petitioner to the respondents after repayment of the said loan. The petitioner has suppressed material facts and created the documents to establish the false claim.

5. The Trial Court, upon consideration of the case records, directed the respondents to furnish security for a sum of Rs.20,00,000/- on or before 21.09.2023, by order dated 07.09.2023.

6. For a better understanding, Order 38 Rule 5 of C.P.C. is extracted hereunder :-

"5. Where defendant may be called upon to furnish security for production of property:-(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,
the Court may direct the defendant, within a time to be



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fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

[(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void]".

7. The petitioner E.Sankar filed the suit in O.S.No.7222 of 2021 against the respondents No.1 and 2, who are father and son, stating that the defendants used to borrow money from the plaintiff for their business purpose and they have repaid promptly. In the first week of June, 2020, at the request of the defendants, the plaintiff gave a loan of Rs.20,00,000/- to the respondents for the purpose of purchasing the shares from the co-owners of Udayam Theatre Complex, Ashok Nagar, Chennai. The defendants received the above said amount during the 2nd week of June 2020.



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8. The defendants promised to repay the said amount within a period of six months with interest at 24% p.a. After several requests, as the defendants did not repay the said loan amount. The defendants issued four cheques totaling Rs.24,00,000/- drawn on Corporation Bank, T.Nagar, Chennai. Out of which, two cheques are drawn on Kotak Mahindra Bank, T.Nagar Branch, Chennai, one cheque is drawn on Corporation Bank, T.Nagar, Chennai and another one cheque is drawn on Indian Bank, Ashok Nagar Branch Chennai respectively. The plaintiff presented issued three cheques for collection through his account in Indian Overseas Bank, Anna Salai Branch, Chennai and one cheque in Bank of Baroda, Vadapalani Branch, Chennai. All the four cheques were returned by his banker as follows:-

1. Cheque No.253509 – returned as Required information not legible.
 - ii. Cheque No.000027 & 000092 returned as Account Closed.
 - iii. Cheque No.391147 returned as insufficient funds in the bank accounts of defendant by a return memo dated 20.04.2021 & 21.04.2021.
- The defendants' act would amount to cheating and the defendants dishonest intention manifests from their conduct. The legal notice issued by the plaintiff was calling upon the defendants to repay the loan amount with
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interest at the rate of 24% p.a. was received by the defendants. The defendants issued a reply notice, denying liability. Hence the suit is filed for recovery of money.

9. The defendants have filed a written statement stating that they had transactions with the plaintiff in the year 2018 - 2019 and received loan at Rs.37,00,000/- from the plaintiff through bank. The defendants repaid the said loan amount to the tune of Rs.40,00,000/- inclusive of interest and the said loan is closed. At the time of availing the said loan, 26 cheques and two promissory notes were given by them as security for the loan advanced by the plaintiff in the year 2018. The said cheques and promissory notes were not returned by the plaintiff after repayment of the said loan. Hence, the above said cheques have been misused by the plaintiff.

10. In a suit for recovery of money, based on the four cheques, interim application in I.A.No.1 of 2021 in O.S.No.7222 of 2021 under Order 38 Rule 5 of C.P.C. has been taken out by the plaintiff seeking an order directing the respondents to furnish security to the extent of claim made in the suit, failing which, to pass an order of attachment of the petition mentioned property schedule 'C'. The plaintiff would state that the respondents are likely to dispose of the petition mentioned 'c' schedule property and if the property is



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disposed of by the respondents, he would find difficult to execute money decree.

11. In consideration of the above said details, it is pellucid that the petitioner /plaintiff has established a *prima facie* case. On appreciating the case of both sides, the Trial Court by invoking order 38 Rule 5 of C.P.C, ordered the respondents to furnish security for the money claim made in the plaint for recovery of money for a sum of Rs.26,00,000/-. The petitioner apprehends that the 'C' schedule property may be sold out by the respondents. Therefore, this Court does not find any perversity or infirmity in the order of the Trial Court.

12. This Civil Miscellaneous Appeal stands dismissed. Sequel to this, Fair and decretal order dated 07.09.2023 passed by the XX Additional District and Sessions Court, City Civil Court, Allikulam, Chennai in I.A.No.1 of 2021 in O.S.No.7222 of 2021 stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
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R.KALAIMATHI, J.

kkd

To

XX Additional District and Sessions Court,
City Civil Court, Allikulam, Chennai.

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