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C.R.P.No.5259 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.5259 of 2025

and

C.M.P.No.26462 of 2025

C.Malakondaiah

... Petitioner

Vs.

1. V.Penchallama
2. Bujjama also known as Kalpana
3. V.Ramesh also known as Nagure
4. Vijiya

... Respondents

PRAYER: Civil Revision Petition filed Article 227 of Constitution of India, to allow the CRP and consequently allow I.A.No.2 of 2025 in O.S.No.5441 of 2025 on the file of the XII City Civil Court, Chennai, and be pleased to order attachment of the immovable property.

For Petitioner : Mr.P.L.Narayanan
Senior Counsel for
Mr.Hariharan E.

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below, dated 19.09.2025 issuing Show Cause notice to the



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respondents herein, calling upon them to furnish security in the application filed by the petitioner with a prayer for attachment before judgment.

2. The learned Senior Counsel appearing for the petitioner relying upon the judgment of this Court in *N.Pappammal Vs. L.Chidambaram* reported in *1983 SCC Online Madras 151* submits that at the time of ordering notice, if the Court is satisfied, it can order conditional attachment, so as to protect the interest of the petitioner.

3. In the case on hand, on perusal of the averments contained in the affidavit filed in support of the petition for attachment before judgment, by the impugned order, the trial Court has decided to issue notice to the respondents calling upon them to furnish security. The discretion vested with the trial Court has to be exercised one way or the other. Order 38 Rule 5(3) uses the word "may". Therefore, at the time of ordering notice to respondent to furnish security, the Court may pass conditional attachment under Rule 5(3). The employment of word "may" instead of "shall" indicates discretion vested with the Court ordering notice. In Pappammal cases cited supra, this Court also said while



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ordering notice to furnish security, the Court may also pass conditional order of attachment. The case law relied on by learned counsel does not lay down any law as if in all cases Court orders notice to furnish security simultaneously shall order conditional attachment. Hence, certain degree of discretion is available to the Court ordering notice. It depend on seriousness of averment contained in affidavit of party seeking attachment and the source of information indicated in averment. The exercise of this judicial discretion by Court of first instances, cannot be a subject matter of revision. The substantial right of the parties are not decided in this case and therefore, issuing notice to the respondents calling upon them to furnish security will not fall under the category of "case decided" to enable this Court to exercise its revisional jurisdiction. Therefore, I do not find any illegality in the order passed by the trial Court. Accordingly, this Civil Revision Petition stands dismissed. The trial Court is directed to dispose of ABJ petition as expeditiously as possible in the light of provisions contained in Order 38 of CPC more



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particularly Order 38 Rule 5(3) of CPC. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.11.2025

Index:Yes
Speaking order
Neutral Citation:Yes
ms

To

The XII Assistant Judge,
City Civil Court, Chennai.



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S.SOUNTHAR, J.

ms

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