



C.R.P.No.1408 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2026

CORAM

THE HONOURABLE Mr. JUSTICE K. RAJASEKAR

C.R.P.No.1408 of 2023

B.Srinivasan

... Petitioner

Vs.

R.Madhankumar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the Fair and Final Order dated 01.02.2023 passed by the learned V Additional District Judge, Coimbatore in I.A.No.2 of 2022 in O.S.No.1287 of 2022.

For Petitioner : Mr.L.Mouli

For Respondents : Mr.N.Manoharan

ORDER

The plaintiff in O.S.No.1287 of 2022 has filed interim application in I.A.No.2 of 2022, seeking attachment before judgement of the two properties belongs to the defendant during the pendency of the money suit.



2. The case of the petitioner (plaintiff) was that the respondent herein (defendant) borrowed a sum of Rs.48 lakhs from the plaintiff on various dates.

For the purpose of recovery of said amount, the suit was filed by the plaintiff. The plaintiff further came to know that the defendant is attempting to sell away the first scheduled item of the property for the purpose of defeating his rights to recover the money in the event of succeeding the decree. The second scheduled item of the property is already under mortgage to a bank, where the respondent has also defaulted and hence, there is likelihood of sale of above properties. If both properties are encumbered or sold, the plaintiff will be unable to recover the money or he cannot enjoy the fruits of the decree. Hence, he prayed for attachment before Judgement.

3. This petition was countered by the defendant, who claims to have repaid a huge amount i.e., to the extent of nearly 29.67 lakhs. He further submitted that he did not subscribe the signatures in the promissory note and same is a fabricated one. He further submitted that the second scheduled item of the property is already mortgaged and as far as the first scheduled item of the property, there is a civil suit pending in O.S.No.914 of 2018 on the file of the III Additional District Munsif, Coimbatore. It is further stated that there are no proper reasons for seeking attachment before Judgement.



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4. After hearing both sides, the trial Court held that the petitioner was not entitled for seeking attachment before Judgement since there were no proper grounds warranting the same. The trial Court further observed that the liability for payment would be decided only during the trial and hence, dismissed the application.

5. Aggrieved over the dismissal of the petition, this revision petition has been filed by the plaintiff.

6. Mr.L.Mouli, learned counsel for the petitioner, submitted that it is an admitted fact that the respondent repaid only a portion of the amount, thereby acknowledged the balance payments due to the plaintiff. He further submitted that, regarding the first scheduled item of the property, though it is stated that a suit is pending, it is their specific case that the respondent by joining hands with family members has indirectly conducting the suit. Similarly, regarding the second scheduled item of the property, it is admittedly mortgaged, and the petitioner has sought only a second charge over the mortgaged property since the bank is having the primary secured interest. He further submitted that there is a likelihood that the respondent alienating the properties and hence, he prays



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to grant for attachment before Judgement.

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7. Mr.N.Manoharan, learned counsel for the respondent, submitted that the respondent has specifically denied the execution of the promissory note. Though it is stated that some portions of the money were repaid, which is concerned with the separate transaction, not the promissory note. He further contended that there is no necessary averment made by the petitioner herein in the petition and on suspicion, alone, insufficient for attachment before Judgement, and strong reasons are required for granting such relief. Hence, he prayed to dismiss the petition.

8. I have also gone through the order, pleadings, other materials produced before this Court and also considered the submissions made on both sides.

9. The granting of attachment before Judgement by invoking under Order 38 Rule 5 of the Code of Civil Procedure could be ordered only if a strong prima facie case is made out and the Court is satisfied that the defendant is taking effective steps to dispose of or remove the whole or any



part of their property with intention to obstruct or delay execution of any decree that may be passed. Hence, the essential requirements for granting attachment before Judgement is that the mala fide intention and conduct of the defendant is to be made out.

10. In this case, though it is stated that the suit is pending and a third party affidavit to show that the respondent is attempting to sell away the property is produced, this Court is of the view that the said third party affidavit alone is not sufficient unless there is some more facts to state that what are the steps the respondent is taking to dispose of the property. In the counter, the respondent has specifically stated that the first scheduled item of the property is the subject matter of the suit in O.S.No.1287 of 2022, as well as the second scheduled item of the property is mortgaged to a bank. However, there is no material to show whether the loan has become non-performing asset, which warrants the bank to initiate recovery proceedings and consequently, sell the property.

11. In the absence of any of the above facts, I am of the view that the trial Court has properly appreciated the materials on record. Granting attachment before judgement without satisfying the necessary ingredients is



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not permissible. Hence, I agree with the Trial Court's order.

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12. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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Index : Yes

Internet : Yes

Neutral Citation Case: Yes/No

To

1. The V Additional District Judge,
Coimbatore.



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K.RAJASEKAR, J.

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